

OF DIVERSE PERSONS, MEN AND WOMEN AND WHORES:
WOMEN AND CRIME IN NINETEENTH CENTURY CANTERBURY

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by

JAN ROBINSON

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"In the name of common justice, in the interests of the race, for the sake of Christian seemliness, let our welfare be safeguarded by female lawmakers, let us be treated by female doctors, defended by female lawyers, and tried by female juries."

(Jessie Mackay, 1897)



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LIST OF ABBREVIATIONS

AJHR	<u>Appendices to the Journal of the House of Representatives.</u>
ICPS	<u>Inwards Correspondence of the Provincial Secretary,</u> Provincial Government, Canterbury Museum
Le 1/1869/12	<u>Notes of the Social Evil Committee,</u> National Archives, Wellington.
LT	<u>Lyttelton Times.</u>

ABSTRACT

The concept of Woman as Criminal provides the focus for an examination of the treatment of women offenders by the criminal justice system in nineteenth century Canterbury. Assumptions and ideologies implicit in criminological theories of female criminality are identified, and the translation of these into a series of stereotypical images of the female offender noted.

Supreme and Magistrates Court data from the latter half of the nineteenth century is analysed in terms of the comparative treatment of men and women defendants, and the context for such investigation located within the history of Canterbury's settlement.

Sentencing disparities in the court data suggest two of the stereotypical images of the woman offender to be particularly appropriate for examination within the Canterbury environment.

Court and newspaper material is then analysed with a view to assessing the extent to which the stereotypes of the "sexualised" and "victimised" female offender were evident in the treatment of women defendants. Such examination occurs within the context of a discussion of Victorian sexual ideology and the idealised images of womanhood prevalent in the nineteenth century.

The perception of women as either madonnas or whores is modified in accordance with the complexity of Victorian social attitudes, while the image of women offenders as helpless victims is rejected for its refusal to recognise structurally induced limits and the constraints of social realities.

CHAPTER 1

INTRODUCTION

Women and Crime. To some the phrase suggests a contradiction in terms, while for others, it conjures up images of gaudy hookers, menopausal shoplifters, and demented baby-killers. Media accounts of female offenders often sensationalise their crimes and typically portray them as aberrant, pathological, and depraved. In novels these women frequently appear as life's victims, drowning in tragedy and despair, and tossed up on prison shores through misuse and abuse.

Academic analysis of the woman offender has been little better. Abused in the literature, or equally abused by neglect, her depiction has often relied on typifications rather than realities, resulting in either execration or exoneration as opposed to sound explanation.

This thesis emerged in response to such neglect. Fuelled by the recognition of women's virtual exclusion from sociology, criminology and social history, it is committed to the task of "making women visible" (Oakley, 1974, Chapter 1). Not only is the focus on one excluded group - women - but in particular on those women doubly excluded as a result of their deviant status. In particular the thesis assesses the extent to which changing perceptions of women may have affected their treatment by the criminal justice system. Criticisms of the essentially a-historical approach to women and crime adopted by recent writers such as Adler (1975) and Simon (1975) indicate the futility of attempting to explain all that

is by reference only to all that was a mere twenty or so years ago. This thesis is founded on the conviction that to understand trends in contemporary courtrooms necessitates at least some consideration of the ideologies of womanhood on which our justice system was founded, and the way that ideology affected the attitudes and behaviour of the judiciary towards women in the past.

Gradually the idea of examining the operation of "justice" as it was experienced by women and men in the latter half of the nineteenth century became more appealing, for this was the era which saw the establishment of New Zealand's current legal system against the background of our colonial settlement and development. Fundamental to the operation of this system vis-a-vis women were a series of preconceptions as to what constituted acceptable behaviour, with these often being translated into stereotypical images of respectability and degeneracy. Teasing out the nature of these stereotypes and the extent to which they were reflected in the treatment of offenders by the criminal justice system seemed to offer one way at least of beginning to understand the ideological origins of our current system. I also hoped this approach might shed light on the origins of some of the stereotypes of female criminals pervasive in criminological literature, and provide a means of assessing their utility in understanding the perception and treatment of actual women offenders.

In its historical approach, I hope the thesis will act as a balance to much of the historical work which exists on women's criminality and add to a growing body of literature concerned with the social history of New Zealand women (e.g. Anderson, 1981; Bunkle, 1980; Dalziel, 1977; Elphick, 1975; Grimshaw, 1972; Levesque, 1979; Macdonald, 1977, 1983; Tennant, 1979, 1983). Very little has as yet been written on women and crime in early New Zealand, the principal contributors in this field

being Charlotte Macdonald's examination of the period 1888-1910 (Macdonald, 1977) and Robyn Anderson's study focussing on Auckland, 1845-1870 (Anderson, 1981). Both Macdonald's national study and Anderson's regional analysis have a greater emphasis on the behaviour of women offenders than on their perception and treatment by the criminal justice system. Further research in this area seemed amply justified to try to cover a longer period of social history, concentrating in particular on the interaction between ideologically based conceptions of women and their translation into actual sentencing practices.

Partly as a justification for this historical focus it may be worth indicating the extent to which there still appears to be a pronounced paucity of historical research in the social sciences. At times social scientists have demonstrated an almost snobbish disdain for anything historical. It has been maintained (Inciardi et al., 1977, p. 9) that the earlier dominance of what was largely a narrative, "unique events" approach to history biased sociologists against the discipline - a bias which has endured despite the emergence this century of a more academic and scientific history. While it may be somewhat trite to reiterate such oft-repeated warnings as

those who cannot remember the past are
condemned to repeat it.

(Santayana, quoted *ibid.*, p. 27)

nevertheless the corollary of this observation is increasingly being realised - namely that analysis of the past yields a more sophisticated understanding of the present. Part of that sophistication lies in the role historical research can play in correcting the myths and misconceptions held about our cultural roots. Our knowledge of the past often becomes a series of "self-evident", often romanticising clichés -

More than anything else, 'romantic nostalgia' - which is, of course, at least a century old - emphasises once more the a-historical consciousness of modern man.

(Zijderveld, 1979, p. 39)

The literature on female crime in some ways evidences such nostalgia when it shows itself to favour a view of criminal women essentially as poor, helpless, victims forced into nefarious activities, or when it hints that women in the past were never the violent and brutal creatures that we have in our midst today following "liberation". Criminologists have also adopted into their consciousness a series of cliched stereotypes of women which conceives of them as victims, as whores, as passive, and so on. A historical study of women and crime provides us with some means of assessing the validity of these assumptions - were nineteenth century women criminals only involved in prostitution? Were they simply the victims of male coercion? Were they passive and non-violent? And so forth.

Such an approach thus provides us with a means for rectifying some of the "historical amnesia" seen to affect our view of crime in general (Herbers, in Inciardi et al., 1977). The tendency to rely on historical assumptions means that one's understanding becomes more informed by myth and ideology than by reality, and one may assess current trends as historical aberrations when they may be indicators of much less "unique" occurrences. Herbers urged that

It is the job of both history and criminology to overcome this tendency toward amnesia which can only be culturally disastrous.

(Herbers, quoted *ibid.*)

and thus part of the motivation for this thesis derives from wanting to dispel some of the amnesia which has surrounded contemporary understandings of female crime.

Of course, historical research involves more than simply dry adherence to a belief that "history counts". History itself can be seen to contain interesting theoretical potential which extends beyond what a merely contemporary focus could yield. In this case studying the nineteenth century provides us with a means of assessing the extent to which some of the stereotypes of women criminals identified in the criminological literature were actually apparent in the courtroom setting. Thus we can assess the degree to which men and women were accorded differing levels of criminal culpability, and identify some of the ways in which different perceptions are translated into different law enforcement practices.

Essentially, then, what is being attempted is the identification of how the sex role stereotypes prevalent in a society may be translated into courtroom practices - thus the declared and intended focus will be on the activities and perceptions of the law enforcers rather than the law breakers. My interest is consequently not primarily in why, for example, Minnie Dean murdered the babies in her care, but in how she was viewed and treated as a result of those actions; and whether the criminal justice system reflected the prevalent female sex role stereotypes of the day.

Accordingly, Chapter 2 encompasses a review of the criminological literature centred around the most prevalent stereotypes of the female offender to have emerged over the last one hundred years.

In Chapter 3 the pattern of colonial crime in Canterbury is established through analysis of court data obtained from both Supreme and Magistrates Court records, with the context for such documentation being provided through a brief summary of Canterbury's settlement during the mid-nineteenth century.

In the remaining chapters of the thesis evidence of two dominant trends in the treatment of women offenders - namely, leniency to those considered respectable and damnation to those defined as troublesome - is related to the ideological assumptions underlying the stereotypes identified in the criminological literature. Thus Chapter 4 addresses itself to the "victimisation" of the female offender, assessing the ways in which some women have characteristically been treated as weak, frail, and in need of protection rather than damnation.

In Chapter 5 the emphasis changes to a consideration of the "sexualisation" of women's crime, in particular the extent to which nineteenth century female immorality was equated with criminality, and on that basis censured and condemned. In both these chapters the treatment of women by the courts is related to the perceptions and ideologies of womanhood generally pervasive in colonial New Zealand, and to the operation of the double standard of morality.

Chapter 6 concludes the thesis with a summary of the links between the various themes emerging from the research. The utility of these for improving our understanding of the current treatment of women by the criminal justice system is also indicated, and suggestions made as to how the material emerging from this study both confirms and challenges existing directions in feminist analysis.

CHAPTER 2

VIEWS ON VICE

Woman as Criminal is a subject which has sparked some of the most emotive writing ever found in deviance theory and criminology. While to some the very concept seems a contradiction in terms, to others it is an understatement of the heinous darker nature of the 'fair sex'. Rita Simon clearly summarised this polarised response when she observed that:

Traditionally people who have written about female criminality have usually adopted one of two positions, which they cling to with great tenacity. One group perceives women who commit crimes as poor, benighted creatures who are victims of male oppression and of society's indifference and disinterest. The other group perceives women offenders as being more cunning and more crafty than men; as having learned how to commit crimes that are more difficult to detect; and as counting on the chivalry of male law enforcement officers to avoid arrest, conviction and imprisonment.

(Adler and Simon, 1979, p.6)

Thus female criminals have been variously described as "victims of circumstance and exploitation" (Elliott, quoted in Wilson and Rigsby, 1975) whose crimes can be attributed primarily to "malevolent male influence" (Adam, 1914), and on the other as depraved, vicious "monsters" (Lombroso, 1895) and "colossal petticoated atrocities" (Adam, 1914) who are obviously "more nearly allied to things hellish than to beings heavenly" (ibid).

Yet although in the past the superlatives have flowed off the pen, the actual number of pens put to such task has been very small. The following literature review will begin by examining the neglect of women in

criminological research and, since this has often been attributed to the grossly differential sex ratio in offending, will consider some of the reasons advanced for this differential. The primary focus of this review, however, will be on the images and stereotypes of women underlying the theories on their criminality, and the identification of these stereotypes forms the organising device around which the rest of the review will be based.

THE NEGLECT OF THE FEMALE OFFENDER

One of the most significant aspects relating to criminology's study of women offenders has been the discipline's almost absolute dearth of interest in them. In 1950 Otto Pollak felt it incumbent upon him to devote an entire book to *The Criminality of Women* in an attempt to redress the balance, but it is only in the last fifteen years that there has been any noticeable increase of interest in the subject - and even now the bookshelves are not exactly groaning under the weight of these new treatises! Many recent writers in the area have begun by commenting on the neglect of the female criminal both as an object of research and of penal policy and practice (e.g. Campbell (1981); Heidersohn (1968); Hutter and Williams (1981); Jones (1980); Kelsey (1979); Klein (1973); Naffin (1981); Price (1977); Rasche (1974); Smart (1976; 1977); Smith (1965); Ward, Jackson and Ward (1969)).

The emerging picture reveals that in marked contrast with the tomes of theorising and analysis that have been devoted to offending males, the female offender has either been ignored, or relegated to the footnotes at the bottom of the page, or subsumed into the accounts and explanations offered for men's crimes (Rasche, 1974).

For evidence of such neglect we need only cite a few works on crime in New Zealand. In 1962 a book written about prisoners' tattoos (Unger, 1962) made only one reference to females throughout - and that was in connection with the (psychologist) author's comment that there is always a strong sexual nature to such tattoos as evidenced by the joy prison inmates expressed over making love to girls with tattooed genitalia (who, he said, were normally borstal girls or prostitutes). The significance of the tattoos worn by female delinquents was entirely overlooked except for where they became directly linkable to the male offenders. A 1961 Justice Department publication on Absconders from Penal Institutions did actually venture to state that "Only males were included in the study" (Justice Department, 1961) but clearly saw no need to justify this fact. And a more recent publication on Juvenile Crime in New Zealand (Department of Social Welfare, 1973) accords females very little attention throughout, preferring to subsume them whenever possible under male categories.

It was neglect such as this that led Frances Heidensohn to comment that female deviancy in sociological research could best be seen as "an obscure and largely ignored area of human behaviour" (Heidensohn, 1968, p.160), and such disregard for women's crimes surely reflects in part the general reluctance to see women and women's lives as "fit" and proper topics for academic research (Oakley, 1974, Chapter 1). For if women have been largely "invisible" in social research then nowhere more so than when their actions (or rather, society's response to such actions) have resulted in their being ostracized behind high walls and strong bars. As Ann Jones has scathingly remarked:

...criminology knows next to nothing about women,
since it has concentrated all along on the doings
of men.

(Jones, 1980, p.4)

Thus Hermann Mannheim's key work Comparative Criminology (1965) manages to accord only half a chapter in a two-volume treatise to female delinquency, and a survey of 17 introductory American criminological text-books conducted in 1975 found only five to have separate chapters on the female offender, two of which were penologically oriented anyway (Wilson and Rigsby, 1975).

Such neglect has been costly both in terms of the quality of theorising on women and crime as well as on the policies and practices developed for their punishment and/or rehabilitation. David Ward et al. were to write in 1969 that:

Our knowledge of the character and causes of female criminality is at the same stage of development that characterized our knowledge of male criminality some 30 or more years ago.

(Ward et al., 1969, p. 847)

and twelve years later such "theoretical stagnation" (Naffin, 1981) was still, unfortunately, being remarked on as we continued to rely on essentially "second-rate theories for the second sex" (Campbell, 1981). The overall neglect of female crime, combined with sex-specific hypotheses about the peculiar nature of female offending, has produced a situation whereby male criminality has been investigated sociologically in terms of differential association, subcultural delinquency or the labelling process while the woman offender still runs the risk of being dismissed as either menstrual or mad, or mad because she is menstrual!

It is also the case that the lack of theoretical development in the field of female criminality is reflected in the treatment of female offenders (Smart, 1977). Little thought or finance goes into developing penal policies for women convicted of crimes - indeed, it is dubious whether the New Zealand Justice Department even has a rational, coherent policy for female offenders! It has been pointed out clearly elsewhere that

Women's prisons might be nicer to look at but they receive less funds, have lower priority and offer less in the way of educational and recreational facilities.

(Clark, 1978, p. 411)

That women offenders are considered relatively unimportant is reflected in the fact that in 1964 it was stated that the building of a new prison for women was a priority issue, yet it took ten years to see the project completed. Possibly the delay may reflect in part the Justice Department's ambivalence over whether imprisonment actually constitutes a viable option for women at all - in 1968 it stated of New Zealand women in prison:

The overwhelming impression is that they are 'just ordinary women'. Few, if any, are dangerous; few, if any, are a security risk. They do, however, tend to have more unfortunate lives than most people.....

(Department of Justice, 1968, p. 264)

Yet that same Department continues to imprison such women, who are doubly penalised in that while they should not be in prison in the first place, when they are confined it is in institutions located inconveniently, structured inappropriately to their needs, and with grossly inadequate facilities. It is issues such as these which prompted Clark to state

That an institution such as Christchurch Women's Prison exists at all suggests that little thought has been devoted to the subject of the female offender.

(Clark, 1978, p. 428)

However, it is not simply because they are "women" that female offenders have been ignored; rather, such neglect reflects criminology's links with the policy-makers whose orientation is towards "social problems" research (Smart, 1977). Female crime has generally been considered to be more offensive than dangerous, such that

from the beginning women delinquents were much more regarded as erring and misguided human beings needing protection and help than as dangerous criminals against whom the social order should be protected.

(Lekkerkerker, quoted in Rasche, 1975, p.21).

In fact, a further barrier to criminological knowledge has at times been the attitude that the female offender in particular should herself be protected from the probings and prying of researchers - "Even the 'fallen' woman must have what is left of her virtue protected" (ibid, p. 12).

Certainly the fact that female crime was viewed as "so much more trivial and less socially destructive (Cowie et al., 1968) than male crime has resulted in its seldom being rated a priority research and policy issue, and Carol Smart neatly sums it up when she states:

In the past female criminality has not been thought to constitute a significant threat to the social order, and even in the present, with the increases in the rate of offences committed by women, criminologists and policy-makers are slow to re-evaluate the notion that female offenders are little more than insignificant irritants to the smooth running of law and order.

(Smart, 1976, p. 2).

THE SEX RATIO IN OFFENDING

Criminologists have generally accounted for the neglect of the female criminal in terms of the small numbers of women involved in crime,¹ noting that

1 In New Zealand the number of women charged as a percentage of total charges remained around 5% from 1920 to 1960 (Brown, 1970). If we consider the Justice Department Statistics for 1977, we find the sex ratio of men to women appearing in the Supreme Court is 12:1, compared with 5:1 in both the Magistrates and Childrens Courts.

The crime rate for men is greatly in excess of the rate for women - in all nations, in all age groups, all periods of history for which organised statistics are available, and for all types of crime except those peculiar to women such as infanticide and abortion.

(Sutherland and Cressey, 1960, p.138)

It is certainly true that the sex variable is THE most important factor distinguishing offenders from non-offenders (Brown, 1970), yet it is equally true that it has been the most neglected variable in sociological and criminological research (Harris, 1977). In New Zealand the comment has been made that even though the sex differential in crime rates greatly exceeds that of race, nevertheless it is the latter which receives all the research and media attention (Nixon, 1976) - thus instead of expressing concern over the Maori or Polynesian "crime problem", we could more feasibly be documenting the Male crime problem! Twenty years ago Barbara Wootton accused criminologists of being "curiously blind to the obvious" (Wootton, 1963, pp. 31-32) in not attempting to discover why there was such a difference in the respective male and female crime rates, and suggested that if only the reasons giving rise to this constant ratio could be uncovered then it might be possible to reduce the overall crime rate (ibid, p. 7). For as Frances Heidensohn was subsequently to point out, either the law is very effective in making half the population conform or it is totally irrelevant and other factors are responsible (Heidensohn, 1968).

Faced by such a marked sex difference in recorded crime, criminologists have had to decide whether women really are that much less criminal than men. Towards the end of the last century Morrison suggested that the lower crime rate of women stemmed from their moral superiority to men, a superiority which was largely a consequence of their maternal duties (Morrison, cited in Philips, 1977, p. 150), while a French writer was to remark that

Because women went to church five times as often as men it was only natural that their crime rate should be only one-fifth of the male.

(cited in Mannheim, 1965, p. 707)

Generally, however, the notion of female moral superiority has not been a favoured one, and was explicitly rejected as early as 1916 by Willem Bonger who maintained that

Her smaller criminality is like the health of a hothouse plant; it is due not to innate qualities, but to the hothouse which protects it from harmful influences. If the life of women were like that of men their criminality would hardly differ at all as to quality, though perhaps somewhat as to quantity.

(cited in Adler and Simon, 1979, p.20)

More recent refutations of any innate goodness have stressed the ways in which women are socialised to conformity to a greater extent than males and the heavier sanctions they face for deviating from accepted norms (e.g. Bertrand, 1969; Ritchie and Ritchie, 1978, Chapter 11).

Such a view stands in marked contrast to that often espoused by criminologists committed to seeing women as "inherently as villainous as men" (Nixon, 1974, p. 79), with the greater leniency accorded them by the justice system being in large part responsible for the sex differential. Thus, it has been maintained that it is only in the official crime statistics that such a startling sex ratio occurs, with self-report studies indicating the ratio to be in actuality much lower - Hindelang (1971) estimated it to be 1:2.5. The so-called "dark figure" for crime has therefore been said to be very much higher for females than males (Pollak, 1950; Nixon, 1974), and probably the most influential writer of this persuasion has been Otto Pollak, who wrote at some length on the "masked character of female crime" (Pollak, 1950, Chapter 1).

Basically Pollak maintained firstly, that offences by women tend to be under-reported; secondly, that female offenders are less often detected and thirdly, that even if they are detected, women offenders meet with greater leniency than their male counterparts.

To support his claim that female offenders were under-reported, Pollak gave as an example crimes of violence, maintaining that the victims of female aggression either could not report (as in the case of children, because of their age and dependence on the woman), or would not (as in the case of men, who would be too socially embarrassed to admit to having been hit by a woman). However, as Smart has pointed out, children are just as likely not to report abuse by their fathers, and there are many women around who out of fear, dependence or whatever will often refrain from reporting cases of assault or rape performed on them by men (Smart, 1976, p. 49).

In arguing for lower female detection rates, Pollak alleges that this is in part due to the greater manipulative and deceitful traits found in women. The inherent deceitfulness of the female sex is seen as lying in female physiology, firstly, as a result of menstruation which, since it has often been considered filthy and loathsome, women have been trained to conceal; and secondly, as a consequence of the respective roles of the sexes in the act of sexual intercourse (or rather, in terms of what Pollak, influenced by Freud, thought those roles were and should be). Thus he asserts that:

Not enough attention has been paid to the physiological fact that man must achieve an erection in order to perform the sex act and will not be able to hide his failure. His lack of positive emotion in the sexual sphere must become overt to the partner and pretense of sexual response is impossible for him, if it is lacking. Woman's body, however, permits such pretense to a certain degree and lack of orgasm does not prevent her ability to participate in the sex act.

(Pollak, 1950, p. 10)

The ability of women to "fool" men in intercourse is seen as the source of the sexes' different attitudes towards "veracity" -

As a result, Pollak endows all women with the master-status of liars and deceivers because of their ability to conceal a lack of arousal.

(Smart, 1976, p. 48)

The third reason Pollak cited for the differential sex ratio in crime concerns the greater leniency with which he feels women offenders are treated. The basis for ~~such~~ chivalry is seen as stemming from the way in which men have deceived themselves into thinking women were weak and in need of protection, essentially because they lived in fear of a revolt on the part of women forced to occupy an unequal place in society. Thus Pollak stated that the chivalrous protection of women by men extends throughout the justice system from male judges through to male victims of crime, since

Men hate to accuse women and thus indirectly to send them to their punishment, police officers dislike to arrest them, district attorneys to prosecute them, judges and juries to find them guilty, and so on.

(Pollak, 1950, p. 151)

Whether or not much "hidden crime" is explicable in terms of the chivalry hypothesis has been the subject matter of a protracted and continuing debate in criminology, and it is ^{on} this concern with leniency towards women that we shall now focus our attention.

THE CHIVALRY DEBATE

The law, man-made though it may be, is kinder to women; few judges, however severe, hold the woman crook in quite the same light as they do her male companion; consequently she goes on her way without the fear of the stone quarries or the "cat" [cat-o-nine-tails] to hinder her.

(Lucas, 1926, p. 30)

The belief in paternalistic benevolence towards female offenders has been an enduring one. In 1957 Walter Reckless was to assert that

Our society is disproportionately soft on the female offender after she gets caught and throughout the whole legal process. This represents a male dominated society's showing deference to the symbol of women...

(Reckless, 1957, p. 2)

a theme continued by Nixon in 1974 when he maintained that:

It is hard for us to see the women we know as monstrous creatures, the analogues of thugs and rapists.

(Nixon, 1974, p. 85)

This reluctance to perceive and treat women as criminals has been reflected at all stages of the criminal law process, from the very formulation of the law itself to the punishments bestowed on that tiny minority of women whom the system's leniency obviously never reached. It has been argued (Nixon, 1974; Pollak, 1950; Walker, 1965) that many female acts are not regarded as criminal despite their being in reality the equivalent of male criminal acts.

For example, where men retaliate for insult or injury by assault or malicious damage to property, women tend to do so by slander, which very seldom takes a criminal form. Wives nag husbands with impurity, but the husband who hits back commits an offence.

(Walker, 1965, p. 298)

Similarly, Allan Nixon, writing within the New Zealand context, has urged

that we should see the whole picture of male and female delinquency as it actually is, so that when we read of a street assault, we think also of a child assaulted in its home, when we read of a restaurant prosecuted for ill-hygiene, we think of the hundred slatternly housewives unprosecuted for the same criminal indifference, when we read of a rape we think of the dozen mothers brutalizing their children into the potential rapists of tomorrow, when we read of a theft we think also of a mother withholding the affection which could have prevented it, and so on.

(Nixon, 1974, p. 85)

Thus he maintains we need to consider whether in all fairness we can continue to tolerate cockroaches in the family kitchen and to keep on refraining from taking the steps necessary to gaul sarcastic mothers (ibid., p. 84). Essentially Nixon seems to be claiming that our impression of women being essentially law-abiding is a false one originating from the fact that the "offences" women are most likely to commit fall outside our accepted legal definitions of crime. Yet in the process of drawing our attention to the protective buffer surrounding the privatised home, he tends to overstate the case by implying that "maternal delinquency" may ultimately be responsible for all of society's miseries, frustrations, neuroticisms and, of course, crimes (ibid., p. 85).

The same attitude which prohibits women's actions from being criminalised has been identified in the reluctance of the victims of female crime to report a woman as offender, in the reluctance of the police to arrest her, of courts to convict her, and of judges to sentence her. A particular reticence seems to have surrounded the application of capital punishment to women - thus it has been noted that

Since 1843, only 13.3 per cent of the women sentenced to death for murder in England and Wales have been executed, as compared with 58.6 per cent of the men; the rest of the women have been reprieved by the Home Secretary of the time.

(Philips, 1977, p. 280)

Historically, however, this seems to have been a relatively recent development with the reluctance in earlier centuries being not so much whether to kill a woman for her crime but how to kill her. Considerations affecting the choice of method did not always spring from notions of chivalrous compassion, either - the reluctance to hang, draw and quarter a woman was explained accordingly:

As the natural modesty of the sex forbids the exposing and publicly mangling their bodies, their sentence (which is to the full as terrible to the senses as the other) is, to be drawn to the gallows and there to be burnt alive.

(Blackstone, quoted in Tobias, 1979, p.145)

One need only recall the hundreds of thousands of women² burnt at the stake during the sixteenth and seventeenth century witchcraft trials to realise that little reticence about the appropriateness of the death penalty for women existed in those days!

Today, in the absence of capital punishment, the argument advanced more often concerns stated magisterial reluctance to send women to prison. In a recent English case a male judge apparently stated to the convicted female defendant:

If you were a man I would send you to prison without hesitation.

(Guardian, 18 August 1980, quoted in Maquire and Shapland, 1980, p.xv)

2 According to Marvin Harris:

It is estimated that five hundred thousand people were convicted of witchcraft and burned to death in Europe between the fifteenth and seventeenth centuries.

(1974, p. 147)

Recent explanations for such leniency tend to see there being more than just plain chivalry involved. Considerations of practicality make it likely that women with children may often not be imprisoned in order to minimise the disruption to social life (Steffensmeier and Kramer, 1982, p. 298). It has also been argued that women are less likely to be viewed as potential recidivists (Simon, 1975), since

Many judges believe that women are better able than men to reform themselves and that, though given to crimes of passion, they seldom possess the pervasive criminal tendencies that characterise male criminals.

(Armstrong, 1977, p. 109)

However, there has also been in recent years a very real questioning of the chivalry hypothesis itself. Attempts to assess whether or not women offenders do actually receive more lenient sentences have yielded conflicting results - some studies have declared there to be definite preferential treatment of women (e.g. Anderson, 1976; Moulds, 1980; Nagel and Weitzman, 1971; Reckless and Kay, 1967); others have maintained conversely that it is men who receive the lighter sentences (e.g. Mawby, 1977; Simon, 1975); while the third conclusion reached has been that sex/gender has very little impact at all (e.g. Clark, 1978; Hagan, 1974). Possibly the most common argument advanced over the last decade is that while chivalry towards female defendants may have existed in the past, it is certainly on the wane now, with this usually being attributed towards changing responses to women and crime occurring as a result of the Women's Movement (e.g. Chesney-Lind, 1978; Crites, 1976; Hindelang, 1974; Smart, 1976; Simon, 1975; Steffensmeier, 1980) - however, the "emancipation argument" will be considered more fully later in this chapter.

Yet while some say leniency towards women is diminishing, others are loudly declaring the whole issue to be a myth and have attempted to expose the darker realities lurking behind the notion of a noble and solicitous

"chivalry" (e.g. Anderson, 1976; Armstrong, 1977; Chesney-Lind, 1974; Scutt, 1979; Smart, 1977). Much of the focus has been on the extent to which chivalry may or may not be obvious in the treatment of female juvenile delinquency (e.g. Armstrong, 1977; Chesney-Lind, 1974; d'Orban, 1971; Hampton, 1977). It seems that the most common "crimes" for which female delinquents are institutionalised have been identified as running away, incorrigibility, sexual offenses, probation violation and truancy (Armstrong, 1977; Vedder and Somerville, 1970), crimes which involve more the isolation of sex role expectations for girls than the breach of any specific criminal law. Armstrong (1977) found 50 per cent of girls, compared with 20 per cent of boys, to have been institutionalised for non-criminal offences, yet the girls were generally given longer sentences.

This finding corroborated earlier work in this area done by Meda Chesney-Lind (1974) and Carolyn Temin (1973) in the United States, but it is not only in America that we find girls receiving harsher sentences for non-criminal offences than boys do for criminal ones. The same process has been identified in Britain (Smart, 1976), Australia (Scutt, 1979), and in New Zealand it has been investigated in terms of the disproportionate application of the "Not under Proper Control" clause on our statute books (Hampton, 1977; Kelsey, 1979). Such a clause provides social workers with the opportunity to gain more extended control over a child's life (Hampton, 1975, p. 55), and its application to teenage girls in particular reflects a concern with controlling and straitjacketing female sexual expression, yet one which is usually justified in terms of needing to "protect" them from "getting into trouble".

What is interesting is that the justification for such treatment is still couched in terms of the notion of chivalry. The belief expressed has long been one of seeing women as in greater need of care and protection than men, with this belief justifying their incarceration for longer periods.

In fact, the indeterminate sentence was first introduced only for women in the United States on the basis that they should be treated rather than punished, and out of a belief that the rehabilitation of the sexually immoral was a lengthy process (Armstrong, 1977). "Saving" or "protecting" girls, it seems, justifies treating them more severely than boys who break the law, but as Chesney-Lind points out:

Punishment in the name of protection is much
like bombing a village to save it from the
enemy.

(Chesney-Lind, 1974, p. 50)

Thus it is apparent that in the name of chivalry women may often have been subject to a paternalistic care and protection which has expressed itself in greater intervention and control in their lives (Anderson, 1976, p. 355).

In order to better appreciate the utility of the concept of chivalry, it is necessary to locate it within the particular stereotypical view of women to which it gave rise. Men have been urged to be "chivalrous" to women as a result of the latter being perceived as weak, frail, passive, vulnerable and ultimately dependent creatures. Women were not strong enough to "take" being treated as equals - they had to be accorded a certain deference which expressed itself particularly in their needing to be protected from life's vicissitudes. In the past such a view has been used to justify "protecting" women from the responsibility of exercising any role in the political and economic spheres of social existence - it was thus given as a reason for withholding property and voting rights from women (Kanowitz, 1969).

Within the criminal justice system, it has, as we have seen, been used to justify greater state intervention in women's lives, with this being most obvious when the woman in question seems to have violated

traditional sex role expectations. Thus we find the New Zealand Justice Department explicitly stating that

The young girl who is sexually promiscuous needs help if she is to be diverted from wrongdoing towards a happy and useful life. Her youth may well justify a period of supervision for her own protection.

(Department of Justice, 1964, p. 33)

Predictably, no such recommendation is made for the sexually promiscuous boy. This sexual double standard will be examined both later in this chapter as well as in more detail in Chapter 5, but at the moment it is important to recognise that chivalry may in fact operate towards non-conforming females in a repressive sense (where "protection" justifies intervention to the point often of institutionalisation), while it may be applied in its more indulgent form only to those women displaying sex-appropriate behaviours. Thus factors such as age, race, class, appearance, and offence type, rather than gender alone, may mediate to some extent the degree of leniency or harshness a woman is likely to receive. Visher (1983) concluded from her study of gender and police arrest decisions that young, black or hostile women received no preferential treatment while older, quieter, white women did, and the issue of demeanour (especially crying) has been identified elsewhere as a significant factor also (de Fleur, 1975; Moyer, 1981). Thus women who exhibit what are seen as appropriate female sex-role responses when confronted with arrest and trial may be more likely to receive preferential treatment - or preferential relative to other women, even if not to men.

There is thus much more involved in the concept of chivalry than just the blanket, lenient treatment of all women.

A chivalrous relationship between men and women, in general, can be thought of as a bargain or an exchange. Women receive special treatment in return for displaying appropriate sex-role behaviours...Male police officers may extend preferential treatment to women, but they expect certain gender behaviours in return. Chivalrous treatment of female offenders, however, may be withdrawn when women isolate norms of appropriate feminine conduct and break the bargain.

(Visser, 1983, pp. 6-8)

And to non-conforming women, especially those regarded as delinquent through promiscuity, "chivalry" may still ostensibly be extended but only in its repressive form, that is, as control and confinement legitimated in the name of "protection".

What is particularly interesting is to note the extent to which a woman's economic dependency may be associated with preferential treatment. It has been suggested that formal legal sanctions might be resorted to most frequently when other social controls are absent or diminished (Black, quoted in Kruttschnitt, 1982, p. 498), and since being in a position of economic dependency subjects one to a greater degree of informal social control (Millett, 1970), then one could hypothesise that economically dependent women might receive more lenient sentences. Kruttschnitt's study revealed a woman's economic dependency (calculated by cross-tabulating the three variables of source of financial support, marital status, and identity of persons living with the defendant other than her husband or children) to be an influential factor in determining the severity of sentence and the likelihood of a custodial sentence being imposed, leading her to conclude that

The legal system prefers to exert little control over women whose lives presently contain an indicator of daily social control such as that entailed by economic dependency.

(Kruttschnitt, 1982, p. 510)

The retention of male power in society is facilitated by keeping women in these positions of economic dependency (Kelsey, 1979, p. 18), and associated with this is the preservation of women in the home-making role. Thus Harris (1977) has argued that it is not in the interests of male dominance to define women as criminal and confine them in prisons for the perpetuation of such dominance depends to a large extent on women being in the home - not in prison. To institutionalise women jeopardises the child-caring and husband-servicing role they have traditionally performed and threatens those structures conducive both to the preservation of the nuclear family and the continued functioning of males in the public, occupational sector. Much hinges, therefore, on the conception of women as dependent, home-making wives and mothers rather than as assertive, imprisoned crooks, and thus a large part of society's condemnation of the female criminal has arisen not so much from the nature of her offences so much as from outrage at her having violated the ideal female sex role. Thus,

A murder by a woman was regarded in some subtle way as different from a murder by a man. A paternalistic society felt let down by a woman who behaved immorally in the crew's quarters of a ship. Again, how could a woman possibly violate the idealized picture of a loving, caring mother by being cruel to her child!

(Mackenzie, 1980, p. 22)

Keeping alive the nurturing, home-making role of women serves the economic ends of eliminating much labour competition so far as males are concerned as well as freeing the latter for full-time extra-familial institutional organisation and control (Harris, 1977).

Beliefs on the special nature and treatment of women offenders, therefore, are intertwined with the exclusion of women from the economic process. Held by both sexes these beliefs serve dominant male interests and afford dubious privileges to women in return for curtailment of rights and restrictions on their activities, and thereby reflect and reinforce the sexism in society at large.

(Steffensmeier and Kramer, 1982, p.301)

Thus what is central to the chivalry debate is the recognition of the particular sex stereotypes at work in our society in order to be better able to understand the structural mechanisms operating to ensure the continuation of particular sex role behaviours which will guarantee the preservation of existing social relations between the sexes. We can therefore conclude that

Benevolence and leniency constitute a two-edged sword: Putting women 'on a pedestal' helps keep them 'in their place'.

(de Crow, 1974)

STEREOTYPES OF THE FEMALE OFFENDER

What should by now be apparent is the extent to which any study of women and crime must be performed within a conceptual context which acknowledges the existence and significance of the sex role stereotypes underlying both the practical and theoretical responses to such crime. We can understand "stereotypes" as comprising

A complex set of images and conceptions which denote the general characteristics and appropriate behaviour of a given group in society.

(Hutter and Williams, 1981, p. 16)

and traditionally for women these have incorporated such understandings as women being weaker and more passive than men, as having a strong maternal instinct which innately prepares them for motherhood, as having the home as their main sphere of work and interest, and as being in a resultant position of economic dependency on a man. The acquisition of such stereotypes is complex in that

Perceptions of the nature of women affect the shape of the categories assigned to them, which in turn reflect back upon and reinforce or remould perceptions of the nature of women in a continuing process.

(Ardener, 1978, cited *ibid.*)

At times the identification of such stereotypes can be equally complex, for the everyday assumptions incorporated into them tend to obscure their recognisability. Yet one of the most significant features in the historical development of theorising on the female offender has been its reliance on a set of assumptions concerning the nature of womanhood, and its concomitant tendency to describe and analyse the woman offender within the framework of a series of narrowly defined typifications of female criminality. Thus offences by women have been subjected to analytical processes designed to make them "fit" the conceptual baggage emanating from particular notions of the nature of femininity, and it is to a study of these assumptions and procedures that we shall now turn. Essentially what is being proposed is that we consider responses to the woman offender in terms of a series of explanatory processes by which she has had her offences always analysed, sometimes magnified, and frequently trivialised. The often opposing perspectives contained within these explanations reflect to a large extent the diverse images of womanhood which exist in our society, and which can be broadly separated out to form the following ways in which the female offender has been conceptualised and portrayed:

1. Masculinisation - This refers both to the way in which crime has been said to "unsex" women as well as to those arguments suggesting that it is only those women already unsexed or male-like who will digress into criminality anyway. This approach is also associated with a focus on women as the organisers and instigators of much that is prosecuted as "male" crime.

2. The Monsterisation of the female offender. This perspective considers female offenders to be not just as bad as their male counterparts in crime but to be infinitely worse. Associated with this view is the tendency to polarise women into either madonnas or whores, with the female offender being seen to epitomise all that is monstrous and wicked in contrast to the idealised presentation of women as paragons of virtue.
3. Sexualisation - To refer to the "sexualisation" of the woman offender is to consider the ways in which female criminality has often been equated with immorality, and to the identification of a sexual basis underlying all forms of delinquency in women.
4. The Victimisation of the female offender. This approach focusses on women as weak, passive individuals propelled into crime through situations or circumstances beyond their control, and thus presents women even when they are offenders as still being essentially "victims".
5. Psychiatrisation - Essentially this view builds on similar assumptions to the above but identifies the crime-generating circumstances in women to lie in their disturbed mental state, attributing the latter at times to biological factors or linking physical with mental abnormality.
6. Sociological explanations - This perspective has so far only been relatively superficially applied to female offending, essentially considering either the influence of an "abnormal" social environment in producing criminality or the ways in which differences in sex role socialisation for boys and girls are reflected in their respective crime rates.
7. The Emancipation thesis - This perspective has often followed on from examinations of sex role differences to maintain that as these change under the influence of the women's movement so also will the pattern and rate of female crime alter to approximate more closely that of men.

We shall now consider in turn some of the arguments made in support of each of the above.

1. MASCULINISATION

The ideal of submissive gentle womanhood has in the past often made it difficult, if not impossible, for most men and some women to accept that any "normal" woman could commit criminal acts. Thus they have sought to explain female criminality in terms of such women being aberrations, and sought to maintain the gulf between the pure and the depraved through recourse to explanations stressing the "otherness" of the female offender. Thus for some delinquency analysts acceptance of even the very concept of women criminals was conditional on their being able to sever all associations of femininity from the dastardly deeds committed. Efforts towards this end have resulted in denials that the female offender is a woman at all and the assertion that "she's more like a man than a woman", and it is essentially this process which is here referred to as the "masculinisation" of the woman offender.

Lombroso and Ferrero (1895) represent some of the earliest writings in this area reflecting such "reasoning", although they seemed to fluctuate between conceiving of the female offender as more male than female and at other times perceiving her as being far worse than any man could ever be - this latter preoccupation will be addressed in more detail in the next section. Nineteenth century Darwinist influence made itself felt in Lombroso's conviction that an intimate correlation existed between bodily and mental conditions and processes, and he was committed to a belief in the evolutionary superiority of the male. On the basis of such assumptions Lombroso and his son-in-law expected to find more physical "anomalies" and deviant attributes in women initially than men, but their extensive studies of physical characteristics resulted in their being able to locate signs of atavism in only 14 per cent of female criminals



Plate 1: Madame Dumollard

Evidence to support the masculinisation thesis included the presentation of particularly virile-looking female offenders such as the French murderess pictured above.

Source: Hargrave Adam, Woman and Crime, 1914.

compared with 31 per cent of males (Campbell, 1981, p. 40). In order to be able still to retain their original assumptions, they sought for an alternative biological explanation which led them to assert that female offenders were genetically more male than female.

According to Lombroso, the majority of women revealed fewer obvious signs of degeneration than men because the female sex has not evolved as far and thus amidst its general primitive state criminal elements become both relatively obscured and proportionately less degenerate (Smart, 1976, p. 32). Women's progress up the evolutionary scale has been impeded by the sedentary lifestyle imposed on her not culturally but biologically through her "natural" child-rearing role. Women are inherently more conservative than men,

a conservatism of which the primary cause is
to be sought in the immobility of the ovule
compared with the zoosperm.

(Lombroso and Ferrero, 1895, p. 109)

It hence followed, within their reasoning framework, that the "unnatural" criminal woman would be she in whom "exaggerated sensuality" had stifled the maternal instinct. Thus they claimed that

In the ordinary run of mothers the sexual instinct
is in abeyance: a normal woman will refuse
herself to her lover rather than injure
her child; but the female criminal is
different. She will prostitute her daughter
to preserve her paramour.

(ibid., pp. 153-154)

Such a view reflected the ideology of "normal" female sexual passivity so prevalent, as we shall see later, in the Victorian era. The lack of maternity in criminal women was testimony to their abnormality, and the biological base attributed to such exceptionality led Lombroso and Ferrero to conclude of the female offender:

Her maternal sense is weak because psychologically
and anthropologically she belongs more to the male
than the female sex.

(ibid., p. 153)

"proof" of the masculinity of the female criminal was obtained from the measurements they carried out on examinations of prostitutes' skeletons and prisoners who died in Italian penitentiaries, for

The criminal being only a reversion to the primitive type of his species, the female criminal necessarily offers the two most salient characteristics of primordial woman, namely, precocity and a minor degree of differentiation from the male - this lesser differentiation manifesting itself in the stature, cranium, brain and in the muscular strength which she possesses to a degree so far in advance of the modern female.

(ibid., pp. 112-113)

The notion of the "pseudo-male" has been reiterated in other works this century, during which time the emphasis has shifted in accordance with the shifts in knowledge and ideology, from biological to more psychological and later social characteristics. Thus Freud was to maintain the deviant woman to be the one who actually attempts to be a man (no doubt when her penis envy grew too large to handle!), and later Belby (1942, cited in Pollock, 1978, p. 47) was to assert that a surfeit of masculine traits in the female criminal caused her to commit crime. Cowie, Cowie and Slater (1968) attempted to link an abnormal, "masculine", chromosomal structure in female delinquents with criminality. Essentially they asserted that since "some physical basis" must underly the largeness and masculinity of girl delinquents, then possibly that basis was the Y chromosome, for they had already accepted that the latter was the biological determinant of maleness in all its physical and cultural forms (Cowie et al., 1968, pp. 171-172).

It has already been intimated that the commitment to a particular stereotypical notion of femininity, and in part been responsible for efforts to "masculinise" the female offender in order to be able to retain the picture of the ideal. This process also reflects, however, the mistaken

equating of physical and social attributes, in other words, the confusion of sex with gender. For assuming a biological basis to sexual differentiation is then extended to supposing that the same kind of physical basis underlies gender differentiation - in other words, that it is biology which determines both the male and the female, the masculine and the feminine (Smart, 1976, p. 33).

Essentially what Lombroso and Ferrero and their successors did was to ignore the social and cultural dimensions involved in the assessing of masculine/feminine attributes - thus they pondered the lives of later nineteenth century, middle class Italian women and concluded that

The inferior social position of women, their inactive lives, their apparent lack of genius and socially desirable skills, their concerns with trivia and luxury as well as their petty rivalries, were true reflections of the nature of Woman.

(Smart, 1976, p. 35)

The Petticoat Influence

One major way in which women offenders have been likened to men, and one which deserves special attention, is in the conceptualising of the female criminal as possessing what were seen as characteristically male attributes of initiation and organisation. Contemporary writers have referred to such a view as the Lady Macbeth or "Power Behind the Throne" syndrome (Wilson and Rigsby, 1975, based on Reckless), or to assumptions as to the instigative nature of much female offending. However, I prefer to term it the theory of "petticoat influence" after Netley Lucas, who described it so succinctly in his study of Crook Janes (1926) -

No power, no government, however Democratic, is free from petticoat influence; throughout history the wives and mistresses of Kings and Emperors have altered the map and lit the torch of war, accompanied the overthrow of dynasties, and made history as it pleased them...So it is with the Empire of Crime. Behind nearly every big crime, influencing every big criminal, there is some woman who, unseen, has helped to write the most startling pages in the annals of crime.

(Lucas, 1926, p. 88)

Earlier this century Hargrave Adam was to assert that women were notorious as the organisers of crime and urged that they be seen as "the leading spirit in the criminal enterprise" (Adam, 1914, p. 15). Although he had noted that a woman's foolish devotion to a male ruffian could lead her into crime, a more significant and pervasive trait was the "absolute ascendancy which some women attain over men (ibid., p. 10), and which can lure the latter into nefarious activities on their behalf. Such women were seen as wielding hypnotic "mastery" over the men they infatuated, and

Although we cannot exactly define the influence which women sometimes exercise over men, it is, however, pretty safe to say that it is of sexual origin".

(ibid., p. 12)

It was in part Adam's commitment to this idea that initially prompted him to write about women and crime, for one of his stated purposes was to reveal the extent to which women are the cause of so much male crime. Women were "extensively answerable" for the fact that crime in the early twentieth century was on the increase, he said (ibid., p. 333), for women are responsible not only for their own foul crimes but also for the crimes perpetrated by males on their behalf as well as for the crimes committed by the offspring they neglected while organising so much criminal activity!

Cecil Bishop (1931) similarly maintained that

The female sex is largely responsible for the very considerable increase in crime that has been recorded during the past decade.

(Bishop, 1931, p. 288)

while Pollak (1950) was later to take up the theme of women being the usually secret masterminds behind most criminal organisations. Women, he maintained, instigate most crimes but perpetrate only some themselves, preferring to manipulate men into committing them on their behalf. As Carol Smart says:

Such a belief is far from novel, it has its origins in the biblical study of Adam and Eve, and is based on an evaluation of women as possessing an almost supernatural power or extreme cunning which they may utilise for either good or (more usually) evil purposes.

(Smart, 1976, p. 47)

More recently Allan Nixon has also stressed the instigative role played by women and extended it to include the offences they may provoke against them, such as rape and assault (Atwool et al., 1976) - however much crime exists, somewhere there is a woman responsible for it all!

Arguments as to the extent to which "petticoat influence" exists are inevitably varied given their basis in what often constitutes little more than mere speculation, and generally they seem to rest on sexist assumptions. But part and parcel of these arguments is the insinuation that women offenders may in fact be worse than men, and it is to a more focussed examination of this belief that we shall now turn.

2. MONSTERISATION

"Monsterisation" is what I have called the process by which female offenders come to be perceived and described as fiendish brutes, with the outraged cry going up: "She's worse than a man, she's a monster!" In 1895 Lombroso cited an old Italian proverb "Rarely is a woman wicked, but when she is she surpasses the man" (in Lombroso and Ferrero, 1895, p. 147), adding as supportive evidence examples of women tearing off the flesh of their victims and throwing it to the dogs, or driving scissors through the ears of pregnant women and into their brains (ibid., p. 148). Similarly, in the introduction to an early work on Woman and Crime the author took great pains to stress his revulsion at having to perform the unpleasant task of devoting an entire literary volume

to denouncing in unmeasured terms - at times with unappeasable wrath - members of that sex which one has been reared to regard with the eye of compassion and with feelings almost of reverence. I repeat that it is not a welcome experience to have those sentiments rudely violated which we have imbibed at the breast, to be called upon to make it clear that some of those creatures whom we have been taught to contemplate as nearly approaching the angelic are, by their own acts, more nearly allied to things hellish than to beings heavenly.

(Adam, 1914, p. 3)

Adam went on to describe how some of "Eve's erring daughters" (Lucas, 1926, p. 30)

are almost entirely devoid of any gentle or redeeming trait; some of whom, indeed, are in baseness, cunning, callousness, cruelty, and persistent criminality far worse than the worst male offender known to the law.

(ibid., pp. 3-4)

This notion of women offenders being worse than men was in fact given considerable attention by Lombroso and Ferrero, who seemed uncertain as to where to pitch the level of female degradation. Of the female sex generally they maintained women to bear a strong resemblance to children in being

cruel, jealous, spiteful, and lacking in moral sense. However, such traits in women were usually neutralised by "piety, maternity, want of passion, sexual coldness...weakness and an undeveloped intelligence" (Lombroso and Ferrero, 1895, p. 151), but should they be awakened then eroticism and diabolical evil would subsume feminine virtue completely. With the stirring of such passions

the innocuous semi-criminal present in the normal woman must be transformed into a born criminal more terrible than any man...the criminal woman is consequently a MONSTER

(Ibid., pp. 151-152, emphasis added)

The logical outcome of the "double exception" status (as being neither a "normal" woman nor a "normal" criminal) is that the female offender is doubly doomed - she has her actions sanctioned legally, but is also subject to greater social condemnation as a result of her greater abnormality (Smart, 1976, p. 34).

Essentially, then, it has been maintained by Lombroso and others that what is lacking in terms of the numbers of female offenders is more than compensated for in terms of their excessive brutality. In 1914 it was remarked that

One of the most staggering and repugnant attributes to man exhibited by bad women is their perfectly fiendish cruelty.

(Adam, 1914, p. 17)

with it being further maintained that

the cruellest forms of crime are invariably committed by women.

(ibid.)

The inordinate cruelty of the female was thus seen to place her at "the very pinnacle of criminal exaltation" (ibid., p. 18).

In 1974 Allan Nixon suggested that it was hard for us to think of women "as monstrous creatures" (Nixon, 1974, p. 85), but later went on to compare the nature of male and female offending:

It is legitimate to excuse as mere youthful follies the crimes of young men [since they] are frequently crimes of exuberance. The crimes of women are rarely of that kind; they are characteristically offences of malice, such as poisoning, perjury and false allegations of crime; injuries to children...and thefts from stores, employers, flat-mates and the like.

(ibid., p. 130)

Nixon attempted to assert that all he was maintaining was that the "nature" of women determined the character of their "evil" in the same way in which men's determined theirs - however, he then linked female crime with depression and menstruation, concluding it to be:

inevitable that crimes committed at such a time should manifest malice, rage, despair and the like, simply because menstruation itself is a kind of defeat which the body suffers.

(ibid.)

Nixon's largely Freudian-based analysis of the psychological effects of a regular physiological occurrence in women's lives thus lead him to proclaim an essentially biologically-based evilness unique to women not only in its origin but also in its peculiar intensification of evil.

Linked with the monster thesis is the tendency in much criminological thinking to polarise women into two distinct camps, viewing them as "either perfectly normal or excessively anomalous" (Lombroso and Ferrero, 1895, p. 288).

The Madonna/Whore Duality

A long history exists of viewing women in terms of their being either paragons of virtue or monsters of evil, with a woman's moral character being assessed only in terms of black and white while her male counterpart was

allowed countless shades of grey. This madonna/whore duality has a long historical existence. It is evident in the Biblical polarisation of the temptress Eve with the Virgin Mary, and in the Book of Ecclesiastes cursing of female wickedness and lauding of feminine virtue. The Malleus Maleficarum (a fifteenth-century guide to witch-hunting) quotes of Seneca:

'A woman either loves or hates; there is no third grade'.

(Kramer and Sprenger (1484),
1971 edition, p. 43)

while itself proclaiming also that women

know no moderation in goodness or vice; and
when they exceed the bounds of their condition
they reach the greatest heights and the lowest
depths of goodness and vice.

(ibid.)

Historical accounts of the nineteenth century have documented the prevalence of such dualism in Victorian thought (e.g. Crow, 1971; Trudgill, 1976), while in recent times it has been identified and examined in terms of its proclivity in criminological literature (e.g. Klein, 1973; Simon, 1975; Wilson and Rigsby, 1975). The simplistic notion of duality usually equates the criminal woman with the "bad woman" -

Bad women are whores, driven by lust for money or for men, often essentially 'masculine' in their orientation, and perhaps afflicted with a touch of penis envy. Good women are chaste, "feminine", and usually not prone to criminal activity. But when they are, they commit crime in a most ladylike way such as poisoning.

(Klein, 1973, pp. 61-62)

What is interesting is to consider the social control functions associated with such dualism and the particular stereotypes essential to its efficacy as a behavioural regulating mechanism. This theme has recently been addressed by Anne Summers (1975) writing within the context

of the colonisation of women in Australia. She describes the emergence of two distinct stereotypes within colonial Australia, the first, that of the "damned whore", arising during the convict era when women were expected to serve primarily as sources of sexual gratification for the predominantly male population (Summers, 1975, Chapter 8), while the second arose in the mid-nineteenth century when there were moves to establish the bourgeois family and within it the role of women as the moral guardians or "God's police" of society (ibid, Chapter 9). Held together, these two stereotypes were seen as having functioned both to control women in accordance with the principle of divide and rule, and to reproduce the basic authority relations within society as they affected men, women and children (ibid., p. 152). Women who accept the traditional social role accorded them within a male-dominated capitalist society are taught to ostracize any woman labelled as a whore, whose "crime" need only be that as a solo mother, feminist, prostitute, or lesbian she challenges existing social and sexual structures (ibid., pp. 154 ff). But the use of polarised stereotypes to divide women in this way is seen as ensuring the perpetuation of existing sexist authority structures as well as urging women to participate in maintaining their own oppression (ibid., p. 153).

Such dualism, it seems, can also be seen to, in a sense, guarantee for men "good" women to be their wives and the mothers of their children, and to ensure on the other hand a ready supply of "bad" women to cope with the demand for prostitution services. Men are conceptualised as having a strong, irresistible, and uncontrollable sex urge which justifies their recourse to whores, while women are divided into two camps in order that dual male needs may be met. That men do not want the mothers of their children to be whores results in a dichotomising of the female sex drive, with "respectable" women being portrayed as passionless (e.g. Acton 1857, p.101;

Summers, 1975, pp. 241-243) in contrast to the lasciviousness seen to characterise "immoral" women (e.g. Trudgill, 1976, p.9; Summers 1975, pp. 221-222). This is explored in much greater detail in Chapter 5 - suffice to indicate here that such stereotypes of male lust and female passivity can be seen to provide much of the ideological basis for the formation and legitimisation of the double standard of morality.

This leads to the consideration of yet a further way in which the female offender has been treated, for probably the major theme in deviance literature revolves around the sexualisation of female criminality.

3. SEXUALISATION

The notion of the sexualised female offender (Anderson, 1976) refers to the way in which women are perceived as turning to crime for primarily sexual reasons irrespective of whether or not the actual crime committed was a sex offence. Historically the linking of sex with women's crime can be seen in the way in which men's prisons were originally founded to protect society from dangerous criminals while women's prisons arose later to reform wayward and immoral women (Crites, 1976; Marks, 1975). Many criminological theorists have equated female delinquency with prostitution. Lombroso's contention that the primitive woman was rarely a murderess but always a prostitute helped to establish the view that prostitution was the female substitute for crime. And building on the Victorian notion of female sexual passivity led Lombroso to maintain that sexual pleasure in females is experienced by only the gravest of criminals (Lombroso and Ferrero, 1895, pp. 153-154).

Throughout this century the history of the policing of female crime has been characterised by extensive state intervention in the sexual lives of women. Any premarital sexual experiences in young women earned them

the label "promiscuous" and could justify their being institutionalised in the interests of their care and protection. Thus in 1934 Sheldon and Eleanor Glueck wrote at some length about "erotic adventures" of the five hundred delinquent women they studied, and noted how over one quarter of those women were first taken into custody for sex offences, while over half had had illegitimate pregnancies, and over half had been prostitutes before their admission to the Reformatory. of these delinquent women they said:

Illicit sexual indulgence was the chief form of their adolescent and early adult misbehaviour. All but two per cent of our women had been sexually irregular prior to their commitment to the Reformatory, and over seven tenths of those who were married had indulged in illicit sex acts previous to marriage.

(Glueck and Glueck, 1934, p. 300)

Concern over female sexuality led the Gluecks to recommend the widespread use of "harmless sterilization measures", although one of their alternative suggestions was to segregate delinquent women until they had passed the period of fertility - however, this suggestion they considered unsatisfactory since these women could often lead harmless lives if it were not for their "unbridled and irresponsible sex expression" (Glueck and Glueck, 1934, p. 311).

In 1923 Thomas similarly had assumed the delinquent girls main problem to be immorality, and later Konopka (1966) was also to equate female delinquency with sexual promiscuity, both writers maintaining it to be the need for love, recognition, and dependence which propelled girls into such behaviour. Cowie, Cowie and Slater (1968) likewise asserted the sexual nature of female delinquency, while Mannheim attempted to explain the prostitution thesis by alleging that it

merely means that in situations which make a man turn to crime, a woman can often find another alternative in prostitution, semi-prostitution, or at best in sexual behaviour such as a financially dictated marriage and similarly lucrative affairs.

(Mannheim, 1965, p. 701)

Even more recently the assertion that female delinquency is largely sexual delinquency has been made. A 1975 study began by assuming that any participation by women in deviant roles is to be found primarily within the area of prostitution (Rosenblum, 1975).

In New Zealand studies the same trend has been evident. Eileen Philipp equated female juvenile delinquency with sexual misconduct (Philipp, 1946), while the Justice Department declared in 1968 that

a good deal of what may be regarded as 'anti-social' activity on the part of women and girls lies within the borderland between morality and crime...The traits and environment that may lead a boy into crime may lead his sister into promiscuity, fecklessness, or prostitution.

(Justice Department, 1968, p. 234)

and accordingly they pointed out

that the law which is invoked against females, and particularly adolescent girls, is in many cases an attempt to regulate sexual behaviour by legal sanctions.

(ibid)

Hence the 1960s saw zealous concern for ship girls and other "promiscuous" females made manifest in the high numbers of females being brought before the courts for charges essentially more "moral" than criminal in nature. This is reflected to some extent in the numbers charged with being idle and disorderly in the Children's Court (40 girls in 1965 compared with 24 boys; 77 girls in 1966 compared with 58 boys, and so on), but also in the large number of girls charged with being indigent and delinquent children (Department of Justice, 1968, p. 243). It is further substantiated

by the Justice Department's focus on "ship girls" (ibid., pp. 246-248) and its assertion that

'vagrancy' as the term is applied in practice in New Zealand is largely a young woman's crime.

(ibid., p. 260)

While some theorists actually equated female delinquency with promiscuity and prostitution, others preferred to assert just a very strong association between sexual immorality and criminal offending. Thus Cecil Bishop proclaimed that "sex betrays a woman into criminal circles" (Bishop, 1931, p. 13) and went on to urge that

Few crimes are committed with which prostitutes, or at least loose women, are not connected.

(ibid., p. 79)

He went on to illustrate with some passion how the sexual opportunities accorded through such urban evils as employment for women and pyjama parties could betray women into crime, with the increasing immorality and female crime being especially linked to the unnatural strivings for equality with men. Bishop was particularly condemnatory of the way women exploited their sex to secure and retain control of male gangs of criminals, maintaining that

Crime and sex abuse are always closely connected. Criminals are always seeking women in the malleable state of mind resulting from over-indulgence in erotic emotion.

(ibid., p. 12)

Bishop's assumptions about the sexual basis to female crime led him to assert that it was women who were largely responsible for the overall increase in crime, a conclusion previously reached by Adam (1914) who, as noted earlier, decried the way in which women used their sexuality to seduce and manipulate men into committing crimes on their behalf. The

extension of this associating of female delinquency with sexual immorality has been borne out in the ways in which a sex base has been assumed to underlie all female crime. Thus economically motivated offences become explicable in primarily sexual terms, and nowhere has this been more evident than in the area of prostitution. The prostitute comes to be seen as a sexual transgressor (Davis, 1961), and

as an abnormal person who is driven to prostitution by her craving for sex rather than because of her economic and social condition.

(Al-Issa, 1980, p. 261)

Elsewhere Freudian influence becomes obvious in the conclusions reached by some writers that

In the girl, it seems, delinquency is an overt sexual act, or to be more correct, a sexual acting out.

(Blos, 1957, quoted in Campbell, 1981, p.61)

Even the female terrorist has had her actions attributed primarily to erotomania (Top Security, 1976, p. 245), while another author on the subject who rejects this link as too tenuous nevertheless feels compelled to assert

The key to female terrorism undoubtedly lies hidden somewhere in women's complex sexual nature...Clearly, the sexual relationships of women terrorists have considerable influence on what they do and why they do it.

(Cooper, 1979, p. 154)

Yet he does not urge us to consider the role of sex in influencing male terrorists, and even lists the male/female terrorist relationships which he considers to be potentially analysable for understanding the terrorism of (only) the female partners involved (ibid., p. 157).

That economic, social, and political realities are ignored in favour of attributing a sexual basis to all female crime is consistent with the way in which women are essentially defined as sexual beings with a sexual price-tag in our society (Klein, 1973). Female crime accordingly is inter-

preted as role-expressive of their primarily sexual nature, and hence even explanations of property offences such as shoplifting can become sexualised (e.g. Stekel, 1911-12, p. 240). Thus it was noted that

occasionally women discover that laying hands
on certain objects...with an intent to steal
results in sudden orgasm.

(Stoller, quoted in Al-Issa, 1980, p. 179)

If even larceny cannot have economic motives attributed to it for women, then there is little likelihood of prostitution being defined in economic or occupational terms! Thus it seems that

Women's behaviour must be sexually defined before
it will be considered, for women count only in
the sexual sphere.

(Klein, 1973, p. 27)

and this seems to be just as true of crime as of any other behaviour.

Maintaining the reproductive role of women and safeguarding the nuclear family unit has resulted in efforts to limit and control a woman's sex-expression. Thus the approved role for women in society involves overt disapproval of their participation in un-owned, independent, sex while the reverse may be true for men. Hence the situation mentioned earlier has arisen whereby girls who violate their sexual role are much more likely to be institutionalised than those committing criminal acts (Chesney-Lind, 1973), and the periods of confinement for girl sex-delinquents are invariably longer than they are for male criminal delinquents. The average length of stay of the female detainees studied by Chesney-Lind was on average 2.5 times longer than that of males (ibid., p.63). A 1975 study found 75 per cent of institutionalised female juvenile offenders in America to have been confined for status offences such as "incorrigibility" and "waywardness" rather than for criminal behaviour, with the comparable figure for boys being only between 20 per cent and 30 per cent (Sarri and Vinter, 1975, in

Chesney-Lind, 1977, pp. 121, 124). Numerous other studies in this area have also produced comparable evidence of the way in which the double standard of morality is legally enforced in our society (e.g. Armstrong, 1977; Conway and Bogdan, 1977; Hutter and Williams, 1981; Smart, 1976).

It is also obvious that the double standard extends beyond promiscuity to prostitution, with the prostitute having historically been censured at the same time as measures were being taken to protect her clients from venereal disease! The rationale often provided with regard to the introducing of the Contagious Disease Act (documented in Chapter 5) attempted to justify this one-sidedness by alleging the systems to be useful in protecting also the women from themselves - as we shall see later, one Canterbury magistrate actually maintained the Act to be a "boon" for the women involved (Lyttelton Times, 22 November 1867). Yet the "protection" offered, the "boon" to prostitutes, in reality constituted a repressive law firmly perpetuating the double standard and carrying provisions for the compulsory examination, and if necessary detention, of any woman "deemed" to be a prostitute (Anderson, 1981; Crow, 1971; Macdonald, 1983; Sigsworth and Wyke, 1973; Walkowitz, 1980). It was in the name of "protection for her own good" that the Gluecks advocated the "voluntary" sterilisation of delinquent women (Glueck and Glueck 1934, in Adler and Simon, 1979, pp. 26-27), and under this guise also that women have been subjected to leechings, ovary removal and clitoridectomies (Edwards, 1981, pp. 87-90).

Commitment to the "protection" of women derives from a view of the latter as weak, passive, and in need of such protection, and this leads us on to the next process, namely that which seeks to place women criminals fully and squarely in the victim role.

4. VICTIMISATION

Criminological literature, when it has considered women, has often done so through focussing on the generally male-committed crimes of which women are the victims, crimes such as rape, incest, wife abuse, and so on (e.g. Bowker, 1979; Dobash and Dobash, 1980; Russell and Van de Ven, 1976; Wolfgang, 1978). Yet even in the literature on female offending, it seems women still run the risk of being conceptualised of and described as "victims". This perception of them as "poor pitiful pearls" (Wilson and Rigsby, 1975) derives from a stereotype of women as essentially weak, passive individuals whose criminality can be excused or explained in terms of things that have been done to them rather than by them.

This victim mentality is reflected in Elliott's description of the female offender as

a rather pathetic creature, a victim of circumstances, exploitation, and her own poor judgment.

(Quoted Wilson and Rigsby, 1975)

In writing of the development of reformatories for women, Eugenia Lekkerkerker, a Dutch lawyer who was one of the first to criticise the double standard in the treatment of male and female offenders, noted the tendency of sentencing personnel to see delinquent women as more "erring and misguided" than as potential threats to the social order. Thus she noted:

There has always been something pathetic about the disgraced and dishonoured women delinquent in the eyes of the public, whereas male delinquents are usually feared as dangerous criminals who wilfully (sic) prey upon society, and who therefore generally inspire defensive feelings of hostility and revenge.

(Lekkerkerker, 1931, quoted in Rasche, 1974, p.21)

The female offender has accordingly been portrayed as a helpless, vulnerable individual who has inadvertently "fallen" into crime, and while

she is perceived as unwittingly tumbling down the hole of degradation and despair her male counterpart is more likely to be conceived of as the one who dug the very pit in the first place. This stereotype conjures up a very different image of the female offender from those we have previously considered, for it seemingly stands in direct contrast to those views which stressed the monstrous wickedness, evil intent, and amazing guile of women offenders. However, both sets of views have co-existed in the criminological literature, and possible explanations to account for the holding of such apparently diverse images are suggested later in the thesis when we consider the ways in which in nineteenth century Canterbury female criminals could be seen as either abandoned whores or respectable victims.

One of the very real assumptions underlying the image of women as victims involves the belief that women should not, indeed cannot, be held responsible for their actions - thus in terms of criminal responsibility early criminological literature often likened women to children, lunatics, and the feeble-minded! Lombroso, as we saw earlier, considered women to be "big children" who were restrained only by such characteristics as piety, maternity, sobriety and so on (Lombroso and Ferrero, 1895, p. 151), while Thomas maintained maladjustment in women to derive from their basic child-like state which rendered them vulnerable to demoralization by unscrupulous men and hence to criminal and deviant pursuits (Thomas, 1923). Adam claimed there to be three main factors underlying the "excesses" of the female spirit - namely that women are controlled by their emotions, that they possess less will-power than men, and that they generally have "a lack of moral responsibility" (Adam, 1914, p. 17). On this basis he was able to maintain that if a woman

takes to crime, in enormity she far outstrips
the worst male criminal known to the records.

(ibid., p. 15)

This view has several implications for the treatment of female offenders. Essentially, women can be defined as not accountable for their crimes either because:

- 1) they "belong" to men who are responsible for them (although their being placed under male control, even if it did not actually result from seeing women as weak, may have been maintained by an ideology of feminine frailty which served to legitimate such domination); or
- 2) their passivity and weakness renders them powerless against the influence of either "bad" men or "bad" circumstances - this is seen as explaining how "good girls" go wrong; or
- 3) they are perceived as pathological and their crimes attributed to insanity.

This "quasi-juvenile" status of women (Pearson, 1976, p. 267) has historically been evident in attempts to legitimate the control of men over women. The effect of marriage on women in the nineteenth century was to deprive them of any separate legal existence - since wives "belonged" to their husbands it was presumed, according to the principle of coverture, that if a woman committed a criminal offence while her husband was present then she must have acted under his coercion (Sutch, 1973, p. 85). Yet it was not only women acting in the presence of their husbands who were seen as non-self-determining. Any woman, married or unmarried, could be subject to "malevolent male influence" (Adam, 1914, p. 4), and similarly she could at any time be propelled by circumstances beyond her control into criminal acts.

Such an attitude is still evident in today's courtrooms, as for example when husbands are called upon to help explain their wives' actions, and

when male defendants are automatically viewed as more responsible for the offence than their female accomplices (Pearson, 1976, p. 267). A recent example from a British court involved a 29 year old woman who did not pay for the meal she had ordered. She was bailed only on condition that her father promised to keep her "under control", and that she resided at home until the trial (ibid.). Hence

The image of the 'normal' woman employed time and time again, is of a person with something of a childish incapacity to govern herself and in some need of protection - a kind of original sin stemming from Eve's inability to control her desire to seek new knowledge.

(Hutter and Williams, 1981, p. 12)

Should a woman display, through her criminality, signs of "abnormality", she is even more prone to definition in these terms - thus

women are caught in a double bind whereby those who fully act out the conditioned female role of helplessness and dependence are clinically viewed as neurotic or psychotic, yet those who reject this also frighten society, are frequently ostracized, and may similarly be designated as sick.

(Pearson, 1976, p. 273)

The labelling of women as irresponsible through sickness and abnormality is essentially what lies at the heart of the next process we shall examine, that of the psychiatrisation of the female offender.

5. PSYCHIATRISATION

Psychiatrisation refers to the way in which deviant behaviour is interpreted on an individual level and is assumed to be in some way indicative of the disturbed and abnormal mental state of the offender. At its heart is a commitment to a form of deterministic reasoning which often ascribes behaviourally predictive value to a range of psychological characteristics.

Earlier expressions of biologically determinist thought in criminology were more inclined to stress physiological characteristics, with one frequently stressed viewpoint attaching explanatory significance to female hormonal and bodily processes.

This latter belief was reflected particularly in Pollak's writings on the "generative phases" of women which considered pregnancy, menstruation and menopause to be of central importance:

The student of female criminality cannot afford to overlook the generally known and recognised fact that these generative phases are frequently accompanied by psychological disturbances which may upset the need and satisfaction balance of the individual or weaken her internal inhibitions, and thus become causative factors in female crime.

(Pollak, 1950, p. 157)

He essentially viewed menstruation as "a symbol of injustice which arouses (the woman's) desire for revenge" (Pollak, quoted in Scott, 1974, p. 57), maintaining that it functioned to regularly remind women of the impossibility of their ever being men and thereby raised their guilt and distress levels to a stage where they became more prone to delinquency. Of the link between menstruation and crime, he maintained that,

Thefts, particularly shoplifting, arson, homicide, and resistance against public officials seem to show a significant correlation between the menstruation of the offender and the time of the offence. The turmoil of the onset of menstruation and the puberty of girls appears to express itself in the relatively high frequency of false accusations and - where cultural opportunities permit - of incendiarism.

(Pollak, 1950, p. 158)

Pollak did in fact claim there to be increased feelings of irritability associated with all the female generative phases and urged that menstruation, pregnancy, and menopause should each be seen to constitute "crime-promoting influences" (ibid.). On this basis Campell estimated that

If we total up the entire 'danger time' for women from a hormonal point of view, we might expect any given female to be predisposed to crime for 75 per cent of her life.

(Campbell, 1981, p. 47)

As was noted earlier, the inherent deceitfulness of the female sex could be linked with female physiology to the extent that women were taught to conceal menstruation and to fake sexual arousal, the latter being seen as possible because women did not have such obvious erections as men, and as virtually inevitable given the fact that women were supposedly passive and unable to experience much sexual feeling anyway (Pollak, cited Smart, 1976, pp. 47-48; Thompson, 1974, p. 63).

However, it was not only Pollak who saw female hormonal changes as criminogenic. Kraft-Ebing had earlier maintained that

The menstruating woman has a claim to special consideration by the judge because she is at this period 'unwell' and more or less psychologically disturbed.

(Kraft-Ebing, quoted in Scutt, 1974, p. 56)

while Icard felt women to be "capable of anything" during menstruation:

Passionate loving mothers will cut their children's throats; and others, naturally good, will pose as victims, and invent infamous calumnies against their dear ones; while chaste women will talk and act in a most indecent manner.

(Icard, quoted *ibid.*, p. 57)

More recent studies by Katherina Dalton noted a marked similarity in the effects of menstruation on recalcitrant school girls, newly convicted women, and misbehaving female prisoners, leading her to hypothesise that

The hormonal changes of menstruation probably make the individual less amenable to discipline.

(Dalton, 1961, p. 1753)

Elsewhere shoplifting has been defined as

'Kleptomania' caused by women's inexplicable mental cycles tied to menstruation.

(Klein, in Adler and Simon, 1979, p. 60)

while Bertha Payak (1963) also stressed as a factor in "understanding the female offender" the ways in which she was prey to severe bouts of irrationality during menstruation, pregnancy and menopause. Other studies have not, however, yielded such conclusive results. For example, no association between shoplifting and any particular menstrual cycle phase was found in Dr. Epps' study (Gibbens and Prince, 1962), nor did she find the menopause to be a significant factor. As Campbell noted, the stress on hormonal factors in explanations of female criminality does little more than reduce the offender to the level of a "faulty biochemical machine" (Campbell, 1981, p. 48).

Biological determinism has been evident in theories other than those stressing hormonal influence. While Lombroso and Ferrero claimed the lack of the maternal instinct to characterise criminal women, others have argued of the maternal instinct itself that its sheer intensity alone would be often sufficient to propel women into crime (e.g. Chesterton, 1928; Thomas, 1923). More common, however, have been arguments demonstrating the extent to which feminine biology predisposes women to conservatism and conformity rather than to criminality - in other words, the extent to which it is a crime-inhibiting factor (e.g. Burt, 1925; Cowie, Cowie and Slater, 1968; Freud, 1973). Cowie, Cowie, and Slater, assumed the female personality to be innately "more prudent, more timid, more lacking in enterprise" (quoted in Smart, 1976, pp. 58-59), while Freud attributed passive female sexuality to underlie normal feminine conservatism, the absence of which could predispose young women towards homosexuality and pseudo-male behaviour such as crime (cited Campbell, 1981, pp. 38-39).

The view that it was primarily physiologically based limitations - "natural", inherent, feminine traits - which predisposed women towards conformity has contributed to the perception of female offenders as far more pathological and abnormal than their male counterparts. As Nigel Walker expressed it,

a delinquent woman seems more 'unnatural'
than a delinquent man.

(Walker, 1965)

and this has led in the past to attempts to maintain a clear distinction between the normal and the deviant by measuring how far the latter are from "normality" - hence Lombroso's measuring of "signs of degeneration" and the Eysencks' analyses of scores on extraversion-introversion scales. Whereas male criminality could be accepted as both behaviourally and stereotypically consistent for men, in women evidence of delinquency ran counter to prevailing images of femininity such that some explanation based around individual pathology needed to be found in order not to have those images shattered.

The trend in theorising has therefore been to stress the extent to which female offenders exhibit signs of abnormality, with these arguments initially taking the form of emphasising physical differences. Thus Lombroso and Ferrero's descriptions of women convicted of homicides made mention of such features as "gigantic canine teeth", "big feline eyes", "precocious and profound wrinkles", and "virile physiognomy" (1895, pp. 88-93), while their more general studies led them into measuring craniums, counting moles, and so forth, based on an assumption that bodily conditions directly influence mental processes and behaviour. Later Cowie, Cowie and Slater were to lay great stress on genetic factors, arguing that differences in male and female delinquency rates were

related to biological and somatic differences, including differences in hormonal balance, and these would at the ultimate remove be derived from chromosomal differences between the sexes.

(1968, p. 17)

They maintained they were certain a physical basis existed for explaining female criminality (ibid., pp. 171-172), even though no medical evidence could be provided to substantiate such a conclusion. Their findings were to some extent later corroborated by Gibbens (1971), who also linked delinquency in girls with sex chromosomal abnormalities.

Cowie, Cowie and Slater also stressed the distinctive physical appearance of delinquent girls, commenting that

Delinquent girls more often than boys have other forms of impaired physical health; they are noticed to be over-sized, lumpish, uncouth and graceless, with a raised incidence of minor physical defects.

(Cowie et al., 1968, pp. 166-167)

The characteristically overweight nature of delinquent women had elsewhere been identified by others including Epps and Parnell (1952), Healy (1925) and Morris (1964), with all these studies attaching at least some causative significance to the fact. Thus being overweight was not simply offered as a descriptive comment but was presented as a constitutional predisposing factor in female delinquency. Such an explanation ignored completely, however, the social reality that the institutionalised girls on whom most of these studies were conducted lived in settings notorious for their reliance on nutritionally poor, high starch food, and with little or no provision for either adequate medical care or exercise (Campbell, 1981; Smart, 1976).

However, although there have been studies devoted to documenting the physical abnormalities of delinquent girls, by far the greatest emphasis has been on the ways in which they are mentally and psychologically aberrant. It is true that there has been a general trend towards seeing all criminality

as in some way evidencing psychiatric illness (e.g. Kittrie, 1971; Menninger, 1968), but this trend seems to be disproportionately evident in explanations of female offending.

Because female offenders are an even smaller minority of their sex than are criminal men, there is an understandable tendency to infer that they are more often psychologically abnormal. Moreover, our conception of the female role is such that a delinquent woman seems more 'unnatural' than a delinquent male; and this presumption is particularly strong when her delinquency takes the form of violence or promiscuity.

(Walker, 1965, p. 302)

Some of the earliest examples of this trend can be found in those studies stressing the extent to which female delinquents were "feeble-minded". It was Joan Weidensall in 1916 whose work seems to herald the beginning of the shift, for she strove to modify Lombroso on the basis of it now being evident:

that the mind is more significant than the face, that the composition of motives underlying conduct is more significant than the contour of the mouth, that the presence of feeble-mindedness is more significant than the presence of feeble bodily constitution.

(Weidensall, 1916, Preface)

A study of the mental ages of 127 prostitutes in Kentucky declared them to have a median mental age of 9 years and 10 months (Norton, 1920, p.64), with their median IQ rating being 61 compared with 89 for "hoboes and the unemployed, 85 for salesgirls, 102 for businessmen, and 84 for firemen and policemen" (ibid., p. 65). Similar studies of the period varied in their estimates of the extent of feeble-mindedness in prostitutes from 51 per cent to 85 per cent (ibid., p. 66).

Of particular interest here is a case history from this era of a young woman named Rosalind who led a rather unorthodox life culminating in a brilliant false pretences escapade. She had presented herself at an exclusive

American hotel posing as the daughter of a Federal Inspector and passing herself off as a medical student who had contracted lead poisoning and was now journeying eastwards with her father. Severely cold weather had overtaken them en route such that she decided to travel ahead by train and wait for her father to drive on to meet her, and on the strength of this yarn Rosalind was accommodated in a plush hotel suite where she spent five days lavishly entertaining male university students. This and other escapades were carefully and vividly recorded in a diary she kept, yet despite the astuteness of her observations and the wit of her expression, Rosalind was variously diagnosed by the authorities as "feeble-minded", a "defective delinquent", and a "moral imbecile", and sent to the Minnesota School for the Feeble-minded (Merrill, 1920). It was easier, it seems, to label her mentally defective than be forced to come to terms with a young woman who may possibly have intentionally chosen and planned what had been deemed an unconventional lifestyle.

Assertions as to the feeble-mindedness of delinquent women continued throughout the century, often being linked with other factors to form combinations seen as causative of criminality. In 1934 the Gluecks were to write of their delinquent subjects:

The women are themselves on the whole a sorry lot. Burdened with feeble-mindedness, psychopathic personality, and marked emotional instability, a large proportion of them found it difficult to survive by legitimate means.

(quoted in Adler and Simon, 1979, p. 22)

Their writings reflect the continuing determination of analysts to identify the abnormal features which must surely characterise such "abnormal" women. Thus they drew attention to the early signs of "abnormal development" which should have been recognised as signs of later maladjustment - for example, over a third were "stubborn children", by adolescence 95 per cent had

"vicious habits", and by this stage over four-fifths were engaging in illicit sex practices (ibid., p. 23). The Gluecks' conclusions about these women further illustrate the total otherness with which they regarded them:

This swarm of defective, diseased, anti-social misfits, then, comprises the human material which a reformatory and a parole system are required by society to transform into wholesome, decent, law-abiding citizens! Is it not a miracle that a proportion of them were actually rehabilitated?

(ibid., p. 25)

This conception of female offenders as abnormal, pathological creatures has been an enduring one right through to the present day. Both Thomas (1923) and later Konopka (1966) saw delinquency in females as arising from individual maladjustment and thus conceptualised the offender as disordered and "sick". More recent psychoanalytic accounts invariably turned social issues into psychiatric ones by their adherence to a rigid assumption that only "sick" women would engage in anti-social behaviour (Campbell, 1981, p. 62) - hence Glover's account of The Psychopathology of Prostitution (1989) which focusses on the regressive characteristics and excessive narcissism exhibited in prostitution, and ultimately argues that to tolerate prostitution is in effect to socially approve a pathological condition.

Dell and Gibbens' (1971) study of women at Holloway Prison revealed the majority not to be sentenced there for imprisonment as such but to have been remanded for medical reports, usually of a psychiatric nature, and this seems consistent with moves in the 1970s to transform Holloway into a psychiatric therapeutic community "on the assumption that most female offenders are psychiatrically disturbed" (Robson, 1970, p. 20). The Eysencks' study of personality traits in women prisoners found them to approximate male prisoners in exhibiting high extraversion and high neuroticism, but the extremely high psychoticism scores of the women led them to conclude that

It seems clear that female prisoners (and male ones in a lesser degree) are psychiatrically ill to a marked degree.

(Eysenck and Eysenck, 1973, p. 696).

That female prisoners were psychiatrically much more disturbed than male prisoners did not surprise them -

crime is so unusual an activity for women that only the most unusually high P [psychoticism] scorers overcame the social barriers involved.

(ibid., p. 695)

Other studies were not content to merely identify psychiatric disturbance in women prisoners but extended it to their families as well. Thus Cloninger and Guze (1973) found the families of convicted women felons to be characterised by high rates of psychopathology, and although the psychiatric disorders found were the same as those found in an earlier study on the families of male felons, the frequency of psychiatric illness was twice as high in the families of women felons.

The tendency to psychiatrise female crime is still evident in courtrooms today, either in the disproportionate remanding of women defendants for psychiatric reports or in the undue attention paid to assessing if there have been any recent behavioural changes, with the implicit belief in hormonal disturbance and lessened responsibility (Pearson, 1976). Essentially the approach to the female offender has often been one of trying to explain her social deviance in terms of psychiatric deviance, of asserting that her abnormal criminal acts are explicable in terms of her abnormal psychiatric state.

It is, as already pointed out, true that both male and female offenders have been subject to psychiatrisation, but it seems that this process has been applied much more frequently and rigorously for women than men. There is a much greater reluctance to accord the female offender rationality and

intentionality, and a preferred view of her as sick and unable to control herself. Thus while the male offender may still be described in psychiatric terms, he is less likely to have prescriptive significance attached to that description, while in contrast the woman's pathological state is seen as directly causative of her offending. Ann Campbell summarised it as follows:

Among female criminals, particularly, this idea of individual maladjustment has never been fully abandoned. Although we are now prepared to accept that delinquency among males may be a subculturally normal response to societal frustrations, it is remarkable that even among female urban guerillas, who offer highly articulate accounts of their social grievances, we still ascribe their behaviour to clinical disorder.

(Campbell, 1981, p. 41)

In a similar vein, a recent comment on the courtroom treatment of female defendants noted that

above all, sentences may be reflecting a belief which criminologists had until recently done little to challenge - namely that crime in women is primarily the result of inadequacy, sickness, or emotional problems, rather than a 'rational' activity with financial motives.

(Maguire and Shapland, 1980, p. xv)

Criminological theorising on women offenders has often restricted itself, therefore, to explanations based largely around individual pathology, with comparatively little attention having been devoted to the influence of social factors, such as class, subcultures, societal reaction and so on. The impression gained from much of this literature is that such factors have been considered largely irrelevant in understanding the female offender since she is considered immune to their influence! (Shacklady-Smith, 1978, p.76). However, there have been some attempts to identify the particular forms of socialisation which may be criminogenic, and it is to a consideration of these that we shall now turn.

6. SOCIALISATION

To focus on socialisation processes is essentially to attempt to understand the ways in which human behaviour is shaped and moulded by the social environment in which it takes place. There seem to be two main forms which a concern with socialisation have taken in theorising on female deviance - either a preoccupation with the effects of poverty and the more tangible features of the social environment, or a concern with social upbringing and the differences in sex role socialisation for boys and girls.

The first of these emerged as yet another variation on the pathology theme, as the emphasis shifted from stressing abnormal crime-producing mechanisms in the head to searching for abnormal crime-producing mechanisms in the social environment. Early studies (e.g. Fernald et al. 1920; Bingham, 1923; Gluecks, 1934; Lumpkin, 1931-32) emphasised poverty, over-crowding and the economic disadvantages of the homes from which delinquents came. These factors, however, were not seen as providing economic motives for crime - rather, deprivation was seen as being in some way linked with psychological abnormality, and even though social factors may have been recognised, they were generally not accorded the same causative significance as biological and psychological features. Thus, while Cowie, Cowie and Slater (1968) found the overwhelming environmental factor in female delinquency to be an unhappy home background, their emphasis was ultimately on chromosomal differences between the sexes, and the ways in which girls are genetically less anti-social than boys (Campbell, 1981).

Such features, it is true, were also described in accounts of male criminality, but once again seem to have had more significance attached to them in explanations of female offending. Thus d'Orban (1971) cited studies showing how the background of the woman offender deviates more from social norms than that of her male counterpart, with greater proportions

of female delinquents coming from households experiencing economic hardship, or from homes where the parents had separated, or having been born out of wedlock (d'Orban, 1971, pp. 108-109). However, it may well be that this disparity is at least partly explicable in terms of the "protective" attitudes of sentencing authorities towards women. Shacklady-Smith's study (1978) revealed that girls were more likely to be placed in custody if they were from homes where the parents were no longer living together, while in New Zealand, Hampton (1975) found that females from single-parent or economically deprived homes were more likely to be prosecuted than other females, while this difference was not evident in the data for males. Thus it may be that perceptions of girls in particular needing a "stable", two-parent background (or, possibly, of girls needing a male authority figure in their lives) might predispose them to greater official control and intervention in their lives, and thus contribute more to their delinquent careers in this way than in actually producing the criminal behaviour itself.

The other major form which arguments about socialisation have taken involve attempts to illustrate primarily how differential sex role socialisation for males and females is responsible for the different crime rates and patterns of each sex. Bonger (1916) had argued that women were socially protected from criminogenic influences, and later in the century role theorists such as Parsons and Cohen drew attention to sex role differences but without explaining the social origins of these. It was Marie-Andree Bertrand in 1969 who applied role theory to the study of female crime and demonstrated how the attributes needed for good criminals were much more consistent with the approved sex-role behaviours of boys than girls in our society:

...the normal, conforming male is permitted, and will be prone to engage in a certain amount of anti-social and illegal behaviour. The opposite is true of females: the more conforming and the more 'normal' the less delinquent and misbehaving.

(Bertrand, 1969, p. 74)

Later, Hoffman-Bustamante (1973) was to further stress differential role expectations and opportunity structures and the stronger social controls operating on girls. In particular she emphasised the way in which expectations that girls will not be aggressive but will prefer to seek protection result not only in lesser female involvement in violent crime, but also in women resorting to more passive means of violence - thus women who kill are seen to prefer poisoning as a method, or if a weapon is used will pick up a kitchen implement rather than a gun. Frances Heidensohn (1970) also drew attention to the way in which delinquency and crime can involve behaviour seen as appropriate for males but not for females, pointing out that acts which may be seen as role expressive for males can be viewed as role-distorting or even role-destructive when performed by females. Thus a boy may be almost expected to "get drunk, steal a car, and screw a bird", while any such similar behaviour in the "bird" will be seen as atypical, undesirable, and warranting drastic remedial intervention.

Stress on the passive, conforming nature of the female sex role has further served to reinforce the notion of the woman offender being a much more aberrant and pathological creature than her male counterpart. "Natural femininity" is presented as the antithesis of all that is criminal - hence delinquency for females is seen as evidencing virtual total rejection of and rebellion against her "natural" role. It is not surprising that such assumptions over inherent sex differences should have precluded researchers from considering social factors in more detail, for despite recent isolated

attempts to consider the significance of sex roles, opportunity structures, and so forth, the prevailing attitude in much criminological thinking still reflects that of Cowie, Cowie and Slater who stated that while

social factors have been found to be of very great importance in the causation of delinquency in boys, there is little evidence that they play anything like the same part in the case of girls.

(Cowie et al., 1968, p. 44)

During the last ten years or so, however, the wider social environment in which women live their lives has come under greater scrutiny, and part of this has involved increasing numbers of women both becoming criminologists and then as criminologists turning their attention on the woman offender. As yet there seems to have been little radical revision and adaptation of existing theories of criminality or even much in the way of new theories being generated, for most of their energy seems to have been channelled into debating the extent to which the Women's Movement can be linked with changes in female crime. Since this has emerged as a central area of research and debate, however, the last section in this chapter will be devoted to an examination of the emancipation argument.

7. EMANCIPATION

The emancipation argument being currently espoused in criminological literature basically asserts that the emancipation of women leads to increased criminal offending by women (Adler, 1975; Simon, 1975). As such it echoes the sentiments of earlier male observers of female offending who were convinced that it was the sanctity of home and family which kept women out of crime.

As early as 1891 Morrison had commented that:

In all countries where women are accustomed to share largely the active work of life with men, female crime has a distinct tendency to reach its maximum...The more women are driven to enter upon the economic struggle for life the more criminal they will come.

(Morrison, cited in Philips, 1977, p.150)

He went on to suggest that growing female emancipation from the home role would lead to an increase in female crime. The early twentieth century saw the fear being stressed that

the more a woman's maternal instinct becomes blunted, the more sensual she becomes and the more prone to commit crime.

(Adam, 1914, p. 331)

By the 1930s it was being loudly declared that the emancipation movement was directly to blame for the increasing numbers of women criminals (Bishop, 1931; Thomas, 1923). The education of women was partly responsible for it turned women against housework, and thus Bishop laments the fact that

The really 'modern' girl is seldom inspired by the thought that she is the future mother of the race. She pictures herself as a politician swaying the destinies of Empire, or as an orator holding multitudes spell-bound with the force and lucidity of her reasoning. All of which is picturesque, no doubt, but not within her proper sphere of activity.

(ibid., pp. 272-273)

More recently such fears have been repeated in arguments that the increased participation of women in the labour force provides them with enhanced opportunities for crime (Simon, 1975, p. 107), or that there is a growing tendency for women to be involved in crimes of violence and terrorism (Adler, 1975, p. 22). We are experiencing a veritable "female crime wave", it has been maintained, and with it has emerged a "new breed of female criminal", with both these features representing in effect "the shady side of liberation" (ibid., p. 42). Much significance was attached to

the "emergence" of girl gangs and granny-bashing on both sides of the Atlantic, and the inclusion of a woman on the F.B.I.'s "ten-most-wanted" list in the late 1960s was labelled a milestone in the criminal development of women. Women, it seemed, had never before been violent until the Women's Movement came along and made them so!

Before we embrace such signs of growing female delinquency too eagerly, however, it may be salutary to remember that in the nineteenth century (B.C.) Horace described the way in which young girls then were learning voluptuous dances, lying, giving way to "disgraceful passions" and practising "vicious adventures" (quoted in Blizard, 1967, p. 19). More recently, in the fourteenth century, women were described as "almost as brutal as their husbands or paramours" (Pike, quoted in Mannheim, 1965, p. 696), while even in Victorian England, amidst the ideology of feminine frailty, great concern was expressed over

the emergence in the large towns of a breed
of aggressive, violent, drunken, lawless women,
as prone as their menfolk to crime and disorder.

(Philips, 1977, p. 149)

Evidence from nineteenth century Russia reveals that women were actively involved in terrorist organisations and assassination attempts (Bergman, 1980), while American studies of the late nineteenth and early twentieth centuries demonstrate the extent to which women participated in the criminal underworld as thieves, fences, drug-dealers, managers of vice rings and so on, and not only in their proverbial roles as prostitutes or as aiders and abettors of male criminals (Asbury, 1927, 1933; Inciardi et al. 1977, Chapter 4). Thus it seems that a wealth of historical evidence exists to challenge the notion implicit in Adler's work that it is only since 1960 that women have become violent and terrorists! One could even argue that the fact

that there aren't many Ma Barkers around anymore (or Lizzie Borden, or Lucretia Borgias, etc.) might be used as indications that female crime just isn't what it used to be... .

(Terry, 1978, p. 4)

Freda Adler and Rita Simon were the two principal exponents of the emancipation argument, both penning headline-hitting books in 1975 which triggered the most heated and protracted debate ever to rage over the issue of female crime. Both women assume that the Women's Movement, in eroding some of the structural constraints on women, has contributed towards women achieving greater parity with men in terms of behaviour and opportunity, and in both legal and illegal spheres of activity. However, although these authors were in agreement as to there having been changes in female crime resulting from the influence of the Women's Movement, they were at variance when it came to identifying the particular forms such influence had taken.

At times Adler writes as if the potential of Women's Liberation was still to be realised (Adler, 1975, p. 247), but at other times she implies we are living in a post-emancipation era where women are at last equipped with the same opportunities as men to strive and achieve status in the established male hierarchies of both civil and criminal life (ibid., p.10). For, she maintains,

Women are no longer indentured to the kitchens, baby carriages, or bedrooms of America. The skein of myths about women is unraveling, the chains have been pried loose, and there will be no turning back to the days when women found it necessary to justify their existence by producing babies or cleaning houses. Allowed their freedom for the first time, women - by the tens of thousands - have chosen to desert those kitchens and plunge exuberantly into the formerly all-male quarters of the working world...In the same way that women are demanding equal opportunity in fields of legitimate endeavour, a similar number of determined women are forcing their way into the world of major crimes.

(ibid., pp. 12-13)

Adler substantiates these claims by presenting F.B.I. arrest data for the twelve years between 1960 and 1972 to demonstrate that the rate of increase for female crime is several times higher than the male rate for virtually all major offence types. The arrest data for females were shown to be rising nearly three times as fast as those for males, with the most dramatic increases being noted in robbery (up 277 per cent for women, compared with 169 per cent for men), larceny (up 303 per cent for women, compared with 82 per cent for men), and embezzlement (up 280 per cent for women, compared with 50 per cent for men) (ibid., p. 16).

Adler maintained that other nations experiencing a lessening of the social and economic disparity between the sexes were also witnessing dramatic increases in female crime - hence

Western Europe and New Zealand, for example, where women enjoy a high degree of equality with men, also report a rise in female criminality.

(ibid., p. 17)

The more women move into traditionally male areas of activity, Adler argues, the more masculine their crimes will become - thus she predicts the increasing involvement of women in crimes against the person, more aggressive property offences, and white-collar crime (ibid., pp. 251-252).

Thus it is that in the middle third of the twentieth century we are witnessing the simultaneous rise and fall of women. Rosie the Riveter of World War II vintage has become Robin the Rioter or Rhoda the Robber in the Vietnam era. Women have lost more than their chains. For better or worse, they have lost many of the restraints which kept them within the law.

(ibid., p. 24)

Rita Simon differs from Adler in that she does not consider the Women's Movement to have been particularly influential so far. Unlike Adler, she

does not demonstrate the delight and pride in discovering that female offenders are becoming just as mean and rotten as males.

(Terry, 1978, p. 5)

Nevertheless, Simon maintains that growing occupational opportunities for women are responsible for the increases that have occurred in what she regards as the serious "white collar" crimes of fraud and embezzlement, and larceny (Simon, 1975, p. 46). Whereas Adler predicted increasing female violence (almost regarding it as a kind of hallmark for the success of the Women's Movement), Simon conversely maintains that such "success" will translate itself into decreasing female violence. The reason for this disparity in views probably lies partially in the extent to which Adler views violence as masculine and the emancipation of women to be evident through their growing masculinisation and hence violence. Simon believes that violence in women emanates from feelings of frustration, victimisation, and powerlessness - all factors which she considers will diminish as women become increasingly involved in paid employment. For Simon

The full set of expectations, then, are that women's participation in financial and white-collar offences should increase, and their participation in crimes of violence should decrease, as they gain greater entry into the business world and are rewarded for their contributions.

(ibid., p. 19)

Both Adler and Simon have encountered sharp criticism, to the extent of being accused of leading members of the public as well as some of their colleagues "down an intellectual dead end street" (Miller, 1983, p.59). In particular, Adler's assumption that the simultaneous growth of both the women's movement and female crime rates must be causally linked prompted Ann Jones to dismiss her rather scathingly as "a criminologist who rose to prominence on the strength of a logical fallacy" (Jones, 1980, p. 2).

One of the major drawbacks with the emancipation thesis, has surely been that it has confused causality with correlation. Attempting to explain female criminality by reference to the Women's Liberation Movement ignores

the extent to which the movement itself results from social processes and forces, and the latter may be more directly influential in shaping criminal behaviour than the former could ever be (Smart, 1979).

In fact, one of the very real problems with the emancipation theorists is that they assume a causal nexus without clearly documenting or defining the processes involved. It is difficult to establish even what is meant by the "women's movement" or "emancipation" - most authors tend to use it to signify cultural liberation from sex role constraints (Weis, 1976, p. 25), rather than recognising the limitations of such a concept given that it is sexist structures which most fundamentally oppress women and which to date have not been substantially weakened or altered. As well as being unable to define clearly what the women's movement is, the theorists fail to agree as to when it began (Austin, 1982, p. 409). While Adler (1975, p.25) and Deming (1977, p. 80) suggest the early 1960s, Simon (1975, p.11) posits it at 1967 and Steffensmeier (1978, p.580) at 1968. No systematic analysis of possible indicators has been attempted other than Simon's argument based around labour force participation (Simon, 1975), although suggestions have been made that other likely factors could include educational attainment and changes in the divorce rates (Austin, 1982).

Some writers in this area have suggested that only a very indirect link exists between feminism and changes in female crime, claiming that it is the more general societal changes seen as emanating from the women's movement which bear most influence on the pattern of female crime. The changes cited by such theorists generally revolve around changes in opportunities for crime (Deming, 1977; Simon, 1975) and changes in social controls, with the latter including both stronger peer group support for criminal activity and weaker parental control (Giordano, 1978; Giordano and Cernkovich, 1975). It has thus been suggested of female criminals that

It may be more accurate to conceive of these women as recipients of broad-based (e.g. economic) as well as micro-level changes (e.g. friendship patterns), rather than themselves being the catalysts responsible for a new area of equality in sex roles with resulting increases in deviant behaviour.

(Giordano and Cernkovich, 1975, p.27)

This school of thought recognises that the women most likely to be imprisoned for their criminal offences are young, poor, and black - precisely those women so oppressed as to be the least likely to have been exposed to, or be in positions to accept, much feminist thought (James and Thornton, 1980). Attempts to determine the sex role attitudes held by female offenders have usually found them to be traditionalist often to the point of being anti-feminist (Leventhal, 1977) - thus

Experts seem to agree there is very little liberation among women in crime. Female criminals tend to be young, poor, and black, hardly the richest source of feminist militancy.

(Price, 1977, p. 102)

Notwithstanding the above, however, other writers in this area have assumed emancipation to refer at least in part to personal liberation and individual acceptance of feminist ideology (e.g. Adler, 1975; Leventhal, 1977; Shover and Norland, 1978; Widom, 1979). Thus Adler maintained that female criminals were inspired by feminist sentiments (Adler, 1975, p.15), so that today's women offenders are "fighting not only for urban social change but also for sexual equality along with other women" (Newsweek, 1975, cited in Giordano, 1976, p.4). However, as I have already indicated, Adler's conception of emancipation seems to interpret women's equality as women's masculinisation, claiming in effect that the more women strive to be equal, the more they will become like men, and accordingly the closer their criminal behaviour will move towards approximating that of their male counterparts (Weis, 1976, p.18). Thus she stresses the greater

involvement of girls in drinking, stealing, fighting, violence and gang activity (Adler, 1975, p. 95), associating such changes with her assumption that

The social revolution of the sixties has
virilized its previously or presumably
 docile female segment.

(ibid., p. 87, emphasis added)

The notion of masculinised emancipation for women has been rejected by others who maintain that female criminal offending is role expressive behaviour which extends the traditionally feminine sex role into illegal activity. The interpretation of prostitution offered by Davis (1961) mirrors this emphasis when he suggests it is an extension of the way in which women have been valued and characterised in terms of their sexuality alone - thus in one sense "prostitution is the illegal role analogue of marriage for women" (Weis, 1976, p.18). To express the same point another way, skilled young women can "hustle" to earn a living by displaying themselves as secretaries, barmaids, waitresses, or receptionists, while the unskilled may have to choose between wifedom and whoredom for their financial security⁴ (Klein and Kress, 1976, p. 38). Essentially the same lack of opportunities for women and oppression of women which exist in the "legitimate" social world are present also in the criminal social world. In other words, the "class structure of sexism...is reproduced in the illegal marketplace" (ibid., p. 41). Essentially this perspective counters the emancipation argument by claiming that female crime patterns reflect the prescribed female sex role, and its concomitant oppression of women, in our society. Hence the offences women most commonly engage in are those tied to extensions of their roles as sex objects or consumers.

4 The reality of these two choices for nineteenth century Canterbury women, and the repressive sexual ideology giving rise to them for oppressive and control purposes, will be examined and documented later in the thesis.

In the light of the above argument it is interesting to consider the areas of crime where the emancipation theorists have been noting increases for women. While Adler expressed concern over the increasing violence characterising female crime, critics have questioned her presentation of data in the form of simple percentage changes in crime rates (Hall, forthcoming, 1983; Mukherjee and Fitzgerald, 1981, pp.131-132; Steffensmeier, 1978). Such an approach can be misleading given that the small base line of female crime makes any increase seem inflated, and grossly overstates its significance in comparison with changes in the male rate.⁵ The distorting effects that can be produced through truncated statistical analysis have also been identified in both Adler's and Simon's reliance on crime figures spanning only ten or twelve years (Smart, 1979, p. 53). Other theorists writing from within the same American context as Adler have rejected virtually all suggestions of increasing female violence⁶ (Hoffman-Bustanante, 1973; Simon, 1975; Steffensmeier, 1978; Weis, 1976), with the adamant conclusion of many being that there "clearly is not a 'new breed' of violent women" (American Civil Liberties Union, quoted in Jones, 1980, p. 4).

5 Smart cites as an example of such distortion the fact that in Britain between 1965 and 1975 there was a 500 per cent increase in murder for women - such a shocking statistic provides great material for media panic until it is clarified that the absolute figure for 1965 was one and for 1975 it was five (Smart, 1979, p. 53).

For comparable New Zealand material see Hall (forthcoming, 1983).

6 For example, the F.B.I. Crime Index for the last 20 years indicates arrests for violent crime as a percentage of all arrests for females to have decreased from accounting for 11.9 per cent of the total in 1953 to 10.2 per cent in 1974 (Klein and Kress, 1976, p. 40). Also women's rate of increase for violent crimes in the last decade is less than that of the male rate (ibid.).

Turning now to a consideration of property offending, there has been some evidence to substantiate Simon's claim that it is essentially in this area that the increases in female crime are occurring.⁷ Klein and Kress (1976) report that the rate of increase in female arrests for robbery, burglary, car theft and fraud has exceeded that of men,⁸ although in terms of absolute numbers there is still a very significant male/female disparity (Klein and Kress, 1976, p. 40). Simon maintains that the increase in female property offending reflects the increasing participation of women in the paid workforce, an argument substantiated by the fact that the greatest increases between 1953 and 1972 were in the areas of larceny and white-collar crime, with the two major white collar offences being embezzlement and fraud, and forgery and counterfeiting.

However, to claim that such increases reflect the new occupational status of women and their greatly enhanced opportunities to commit such white-collar crime is to ignore the fact that by far the majority of employed women are still engaged in the traditional "female" jobs - clerical, typing, sales, and so on - not positions generally regarded as according them greatly enhanced opportunities for committing career-related crimes (Miller, 1983). Additionally, to infer, as Simon does, that women's involvement in fraud, larceny, and forgery constitutes organised, large-scale crimes is misleading. Most of the fraud cases involve credit card frauds or presenting bad cheques; the forgery cases are generally little more than "naive" cheque forgery; and the larceny offences are primarily in the

7 The increase in female arrest rates among the serious offences was owing almost entirely to women's greater participation in property offences, especially larceny.

(Simon, 1975, p. 46).

8 The percentage of female arrests for serious property crimes (burglary, larceny and auto theft) as a percentage of all arrests for females rose from 8.5 per cent in 1953 to 21.2 per cent in 1974. (Source: F.B.I. Crime Index, cited in Klein and Kress, 1976, p. 40)

area of shoplifting (Miller, 1983; Steffensmeier, 1978; Weis, 1976).

Rather than reflecting any "new" occupational positions of women, such offences simply continue to mirror the extent to which women's crimes can be linked to their consumption role within capitalist societies (Klein and Kress, 1976; Weis, 1976). Essentially, then, it is argued that

Women occupy and perform roles in the straight and criminal worlds which are defined by their sex-determined lack of opportunity.

(Weis, 1976, p. 19)

An additional counter to Simon's labour force-based argument is that the greatest increase in female property offending has been amongst juveniles with characteristically little or no work affiliation or experience (Miller, 1983). Their crimes are typically of the shoplifting nature and are directed towards acquiring clothes, cosmetics and other items supportive of the traditional feminine role (Department of Social Welfare, 1973, p.18; Weis, 1976, p. 24). The fact that "women are still typically non-violent petty property offenders" (Steffensmeier, 1978, p. 580) challenges the assertion of increasingly liberated women increasingly committing violent crimes. The conclusion reached by many in the field has been that

The 'new female criminal' is more a social invention than an empirical reality and that the proposed relationship between the women's movement and crime is, indeed, vacuous.

(Weis, 1976, p. 24. Also quoted, unacknowledged in Steffensmeier, 1978, p. 580)

An alternative position on the emancipation argument has attempted to demonstrate that statistical increases in female crime derive from factors others than an actual increase in female offending. It has been argued that the real effect of the women's movement has been in altering perceptions of women as criminals and potential criminals rather than

9 Lemert (1971) calculated 75 per cent of forgery arrests to be for naive cheque forgers, while Cameron (1964) estimated 80 per cent of arrests for female larceny to be for shoplifting (Weis, 1976, p. 19).

in changing the actual behaviour of such women (Datesman and Scarpitti, 1980; Maguire and Shapland, 1980; Shacklady-Smith, 1975; Smart, 1976, 1979). According to this view, the more women are defined as independent and assertive, and the less they are perceived as weak and passive, then the more accountable they will be held for their actions and the more they will be meted out "justice" rather than paternalism. It has been asserted that the growing equality of the sexes is contributing to a lessening of the chivalry and leniency traditionally held to be accorded the female criminal (Crites, 1976; Heide, 1975; Smart, 1977), and that law enforcement agencies are in effect adopting the attitude that "If it's equality they want, we'll see that they get it". Hence the most significant change has been "a change of definition, rather than in behaviour per se" (Shacklady-Smith, 1978, p. 87). As Carol Smart has expressed it,

The recent perception of changes in female delinquency is not so much indicative of actual changes in the frequency and character of female delinquency but denotes a new appraisal of the situation.

(Smart, 1976, p. 73)

Contemporary researchers are assessing the significance of links between the economically deprived position of women and their criminality (Box and Hale, 1983; Chapman, 1980; Miller, 1983). Questions are now being asked as to why these trends are apparently occurring simultaneously in capitalist societies - namely, increasing female labour force participation, increasing female property crime, and increasing female unemployment (Miller, 1983, p. 67). The high labour force participation of mothers needs examination in the light of the high imprisonment rate of women living as the sole economic supporters of their children (ibid., p. 68 and footnote, p. 70), and the relationship between relative poverty and female crime needs to be teased out in the context of a society oppressive of solo

parents. Calls have also been made for prostitution to be defined in economic terms, rather than dismissed as a "female sex crime", and for the exploitation of the women involved to be exposed and fought against through such measures as unionisation and decriminalisation (Dee, 1978; Klein and Kress, 1976; Women Endorsing Decriminalisation, 1975).

As the links between economic position and female crime are explored more fully, we might find that instead of Simon's new, sophisticated white-collar criminals, the female offender is typically poorly educated, young, unemployed and of ethnic minority status. Already within New Zealand we have evidence from imprisonment statistics to show the threefold oppression which impinges on black, working-class women.¹⁰ It is imperative now that we explore more fully the relationships between the oppressive structures of sex, race, and class as they are mediated through the criminal justice system within capitalist societies.

CONCLUSION

Woman as Criminal, therefore, can be seen to conjure up a series of images, some of which are conflictual but most of which are unified by a tendency to view women as not responsible for their actions. The denial of responsibility amongst women extends beyond its denial in men, as is evidenced by the greater psychiatrisation of female crime, the greater tendency to institutionalise women for not being under proper control, and the reluctance to attribute economic or political motives to crimes such as prostitution and female terrorism. Thus while both male and female offenders are often presented as "victims" of their social environment,

10 Maori women comprise approximately 8.5 per cent of the total female population, yet in 1978 accounted for 53.1 per cent of all women detained in penal institutions in New Zealand. For younger women the situation is even worse - in 1978, over 60 per cent of those confined in borstals were Maori. (Source: New Zealand Justice Statistics, 1977-78).

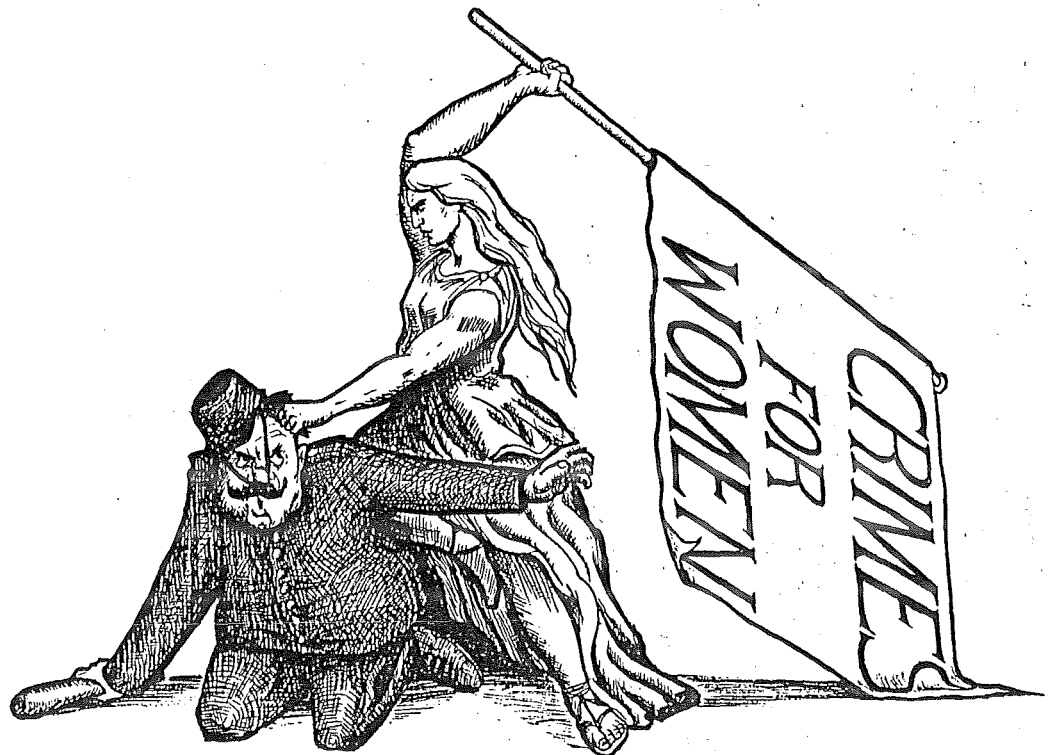
the tendency has also been to view women as victims of hormonal imbalance, mental disturbance, carnal lust, and so on. Hence our review of the literature has considered a series of criminogenic factors, including the female offender's cranium size, emulation of men and general feeble-mindedness.

Until recently, theorising on female criminality has been characterised by almost virtual disregard for social, political and economic factors, as if women were miraculously immune from any influences other than those originating from the workings of their own internal mechanisms. As noted above, changes are beginning to occur in this area, and as the myths surrounding female crime are slowly broken down, we can expect to see changes in attitudes towards women offenders. Revision of the stereotypes will be accompanied by changes in the treatment of female offenders by the law enforcement and sentencing authorities, with it unfortunately being possible that such women may become victims of "overkill" (Steffensmeier and Kramer, 1982, p. 300). Thus part of the challenge facing women criminologists will be to dispel the many myths surrounding female crime while simultaneously striving to avoid an overly-punitive backlash against female offenders.

The consideration of women and crime in the nineteenth century which follows, attempts to pick up some of the issues raised in this chapter and examine them within the context of colonial Canterbury. In part such research assesses the extent to which some of the stereotypes of women offenders in criminological literature may have been mobilised in the treatment of women by the courts during that era. In particular, the Victorian ideology of womanhood and sexuality, so influential in the

establishment of this country, may have fostered stereotypes of feminine frailty and passivity. It may thus be enlightening to consider whether the two themes of victimisation and sexualisation were evident in Canterbury's courtrooms. For while colonial Canterbury was a society committed to a view of women as essentially weak and non-responsible creatures, it was also a society determined to repress any women who challenged that traditional role by asserting their sexuality and independence.

I hope that these themes will emerge more distinctly as the thesis unfolds, and that the social control of women through the twin mechanisms of rewarding conformity to oppression and punishing deviance by repression will become increasingly obvious. Many were the "crimes" done to women in the nineteenth century - not the least of which was the refusal to perceive them as, or allow them to be, rational self-determining creatures. The right of women to be held accountable for their own crimes was in effect another area of denial and repression. Thus one of the most potentially liberating catch-cries for that age would surely have been "Crimes for Women!"



CHAPTER 3

THE FACE OF COLONIAL CRIME

The nineteenth century European development of Canterbury can be viewed as possibly more British influenced and directed than that of any other province in New Zealand. Its organised settlement dates from 1848 when an association was formed in England with a view towards establishing a model colony in the Antipodes (Canterbury Provincial Council, 1973, p.7). Edward Gibbon Wakefield's plans depicted the province as "a closely knit farming community complete with squirearchy, yeoman farmers and agricultural labourers" (Gardner, 1971, p.7), while Christchurch was intended to be "a quiet university town of spires and quadrangles, lawns and trees" (ibid., p.5).

The years 1850-52 saw 3,500 migrants land at the port of Lyttelton, and by the end of the 1870s approximately 77,000 people had arrived in the province (Eldred-Grigg, 1982, p.19). For the most part the immigrants were believers in "the sunny south as the land of promise, the land of plenty, and the land of hope" (quoted in Hopeful, 1887, p.ix). Over two-thirds of these immigrants came on assisted passages, and the majority of them were either male agricultural labourers or female domestic servants (Eldred-Grigg, 1982, p.19, p.23). The demand for labour by the upper classes and landed gentry appeared insatiable, and was substantially aggravated by the siphoning off of large numbers of males to the goldfields of Victoria, Australia, in the early 1850s and to the West Coast of New Zealand in the mid-1860s (Gardner, 1971). The demand for female domestic servants (which will be taken up further in Chapter 5) was

particularly acute, prompting the granting of free passages to single young women from 1867 onwards (Eldred-Grigg, 1981, p.23). The fact that such women often married shortly after their arrival in the colony was a matter of considerable, at times even frantic, concern to their employers (Dalziel, 1977, p.115; Greenaway, 1972, pp.200-202), although the advisability of having as many men as possible settled and tamed by their wives was also well recognised (Graham, 1981, pp.124-125).

The unequal sex ratio of the early frontier society helped prevent the fulfillment of these aims - in 1861 the sex ratio of the European population stood at 622 females for every 1,000 males, evening out to 883 females for every 1,000 males by 1891. Numbers of single adult males remained large throughout the nineteenth century, with most men not marrying until they were about 29 years old, and in 1874 approximately 48 percent of adult males were unmarried (Phillips, 1980, p.219). The contribution of the demographic structure to the dominance of "the male element" throughout nineteenth century New Zealand has been well documented by Jock Phillips (1980) who maintains that

Only by understanding the values and the attractions of male culture in twentieth century New Zealand can we understand that peculiar mixture of resentment and adoration, feelings of threat and paternalism, with which males have treated New Zealand women.

(Phillips, 1980, p.218)

Such ambivalence is well reflected in the treatment of women by the principally male-evolved and dominated criminal justice system, but before considering the actual operation of that system vis-à-vis women it is necessary to consider briefly its organisation and administration within the colonial context.

New Zealand's justice system was largely imported from Britain and imposed on both Maori and Pakeha alike, with the English Laws Act, 1858

providing for the direct application of English law, wherever relevant, to New Zealand (Sutch, 1973, p.90).

Property rights, standards of public order and protection of the person were all transplanted to the new land with a minimum of alteration or adjustment to new circumstances.

(Macdonald, 1977, p.5)

In general, changes adopted into British law throughout the nineteenth century were soon introduced into the New Zealand legal system also.¹ However, New Zealand's efforts to simplify criminal procedure under the Criminal Code Act, 1893 preceded similar efforts in Britain (Robson, 1967, p.365).² Little alteration was made to the punishments which could be imposed on convicted offenders (Macdonald, 1977, p.6). Penal servitude had been substituted for transportation in 1854, and terms of imprisonment could be imposed either with or without hard labour (Webb, 1982, pp.12-13). Less serious offences could be disposed of by a fine or, after 1886, by probation.

Both male and female prisoners were accommodated in the Lyttelton Gaol, which probably accepted its first inmates in the late 1850s or early 1860s³ (ibid., p.10). Conditions in the gaol were extremely harsh, with poor hygiene and overcrowding adding to the discomfort of the dark,

1 For example, the English divorce laws of 1857 were replicated here in 1867, while the British Contagious Diseases Act of 1866 was adopted here in 1869.

2 Among other changes, this Act abolished the distinction between common law and statutory law by making all indictable offences statutory, as well as abolishing the distinction between felonies and misdemeanours (Macdonald, 1977, pp.5-6; Webb, 1982, pp.12-14).

3 Construction on the gaol began as early as 1851 when William Chaney, brought out on one of the first four ships to build the Anglican Cathedral in Christchurch, had to seek other work in the absence of sufficient city development to warrant (or be able to afford) such construction at this time (Gee, 1975, p.8).

austere cells.¹ A letter from the Gaoler - Seager - to the Provincial Secretary in 1862 complained of lice-infested blankets (ICPS 1471/62), while the following year saw repeated fears of an outbreak of fever sweeping through the gaol and into the rest of Lyttelton (Gee, 1975, p.28). In 1863 Seager announced that work was about to commence on a "new gaol on the plains" at Addington, with a separate wing for women prisoners included (ibid., p.32). The Addington Prison was also used as a Female Reformatory under the Contagious Diseases Act until 1886 when such provisions were no longer enforced (Sutch, 1973, p.91), and the substantial reduction in female prisoners allowed the gaol to be closed in April 1889 and all the inmates transferred to Lyttelton (AJHR, 1890, Vol.3, H-4, p.3).

New Zealand prisons were administered regionally until 1875, as were the colony's police forces. The New Zealand Constitution Act, 1852 was intended to establish a system of "dual-control government, colonial and provincial", but the provincial level was inaugurated first. Thus early in 1853 Canterbury and the other five provinces were each instructed to choose a superintendent and provincial legislators (Gardner, 1971, p.11). Provincial Government continued until the Abolition of the Provinces Act 1875, and hence it was not until after this period that substantial efforts at centralising the police and penal systems of the colony could be undertaken. The existence of Provincial Armed Police Forces in particular caused problems, for it was relatively easier for known criminals to move freely amongst the provinces in ways which were not possible for the police

1 An editorial in the Press in 1863 stated

The gaol accommodation is so abominable and the prisoners so huddled and crowded together in cells so small that the sentence which consigns a criminal to prison amounts to a sentence of torture as well as imprisonment.

(Press, February 14th, 1863)

(Police National Headquarters, p.7). The actual rates of pay and promotion prospects for policemen were minimal, promoting inefficiency and frequent corruption.⁵

Investigations into conditions in both prisons and the police force after the abolition of Provincial government exposed some of the worst regional abuses of power and resulted in steps towards reform being taken (Gee, 1975, pp.37-38); Police National Headquarters, pp.9-10). However, it was some time before the statutory abolition of provinces was actually accompanied in practice by the abolition of regional variations in policing and punishment, and the first major police reforms only followed the investigations of the 1898 Royal Commission (Richard Hill, pers. comm., 1983).

The actual court system in New Zealand was based on an essentially two-tiered system of Supreme and Magistrates Courts. Less serious offences (such as drunkenness and vagrancy) could be tried summarily, while crimes such as larceny and assault could either be tried summarily or committed for Supreme Court trial according to the gravity of the individual offence. More serious offences, such as burglary and manslaughter, would only be tried on indictment (Anderson, 1981, p.27).

Having thus presented a brief overview of nineteenth century background factors, it is now necessary to introduce the more quantitative aspects of this study by outlining the nature of the data consulted and their usefulness and limitations.

5 An early police scandal was prompted by the discovery that one member of the Constabulary, Martin Cash, was involved in the running of several Christchurch brothels.

METHODOLOGY

The aim of the research was to consult a range of source materials from the second half of the nineteenth century in order to gain some overall impression of both law-breakers and law enforcement in Canterbury insofar as women offenders in particular were affected by the workings of the criminal justice system. More specifically, the study focussed on a comparison of the court treatment of men and women in order to establish the extent to which this was mediated by stereotypical images and typifications based on nineteenth century sex role ideals. I was also interested in assessing how these images, and hence court treatment, might have been changing for women as the century drew to a close.

A large portion of the research material was obtained by analysing the original, hand-written court record books still retained in the Canterbury Museum. My location in Christchurch, combined with the fact that the province has managed to preserve what is probably one of the best collections of archival sources in the country, led to my pre-occupation with Canterbury data. Pragmatic considerations also dictated the actual period of time studied, since to some extent the availability of the data for only certain time spans determined my focus. Canterbury Supreme Court records were available for the period 1852-1897, while the Magistrates Court material was only obtainable from late 1887 onwards.

In order to appreciate at least something of how the justice system operated in early provincial Canterbury, comparisons were made between the handling of all male and female defendants appearing before the Supreme Court during the period of Provincial Government from 1852-1875. This approach was also adopted for the last 10 years of available Supreme Court data i.e. from 1888-1897, and to obtain a more overall impression

of court practice during these years, the results were compared with material derived from the Magistrates Court records for this same period. With the latter, however, the much greater number of cases involved necessitated some form of sampling, and accordingly only two months in every year were analysed.

In order to obtain a better feel for the individual cases and how they were commented on by the law enforcement and sentencing personnel, court reports from local newspapers were studied, with the principal, though not exclusive, reference being to the Lyttelton Times since it was the major newspaper of the day. Towards the very end of my research for the thesis certain copies of nineteenth century Police Gazettes from the period 1866-1884 became accessible which contained material on the disposal of all offences known to the police. While there was neither the time nor the consistent availability of these to perform any systematic analysis, nevertheless they were studied with a view to gaining at least some impression of what was happening to offenders referred to the Magistrates Court during those earlier years for which the official Magistrates Court records were no longer procurable. Also consulted were such documents as the Inwards Correspondence of the Provincial Secretary, police registers of prostitutes, Parliamentary debates, and other archival materials pertaining to the operation of justice and concern over immorality and the "social evil" in Canterbury.⁶

In the use of the historical data available, certain problems were encountered. The Court records were, unfortunately, found to contain only limited information about each offender, and even what was recorded could

6 Included in this material were the Police Registers of Brothels (1869, 1892, 1893); the Notes of the Social Evil Committee (Le 1/1869/12-National Archives); and Reports on the Royal Commissions on Prisons (AJHR, 1868, A-12, pp.1-44) and on the Police (AJHR, 1898, Vol.3, H-2, pp.1-1192).

differ at various periods - as, for example, in the recording of occupational details. Supreme and Magistrates Courts also differed in the options for sentencing each had at their disposal, making cross-Court comparisons difficult at times. The small absolute numbers of women appearing before the Supreme Court make it difficult at times to attach much statistical significance to some of the findings, while the opposite problem of so many cases in the Magistrates Court necessitated the use of sampling procedures which made it problematic to trace the criminal histories of individual offenders.

Of course, the largest limitation of all must arise from the fact that in analysing Court data we are becoming involved mid-way along the whole crime continuum extending from offences known to the police to offenders in prison. Thus it is dubious to what extent the trends in offending patterns and so forth should be taken as indicators of the actual incidence of criminal activity in the society, and it should also be remembered that the relationship between actual and recorded crimes can by no means be seen as constant for every type of crime - for example, the official statistics for murder are more likely to approximate the actual incidence of murder in the population than are the statistics for larceny or drunkenness (Gatrell and Hadden, 1972, p.351).

The unreliability of crime statistics in general has oft been cited (e.g. Cameron, 1972; Hood and Sparks, 1970), but appears at times to have been reiterated even more firmly when it comes to nineteenth century crime statistics. Since this was the period of an expanding police force and sweeping legislative and administrative changes, there are grounds for being especially cautious in the use of material from this era. Some historians have in fact extended such caution to the point of asserting

that "criminal statistics have little to tell us about crime and criminals in the nineteenth century" (Tobias, 1967, p.21).

Despite such cautions, however, it is maintained here that the consultation of official records is a valid and profitable exercise. Gatrell and Hadden's study of nineteenth century crime statistics, involving a comparison of trends in crimes known to the police and the number of court committals, did in fact show there to be a relatively constant relationship between the two indices (Gatrell and Hadden, 1972, p.351). They also point out that most of the major legal and administrative changes which could have affected nineteenth century British crime statistics did in fact occur during the first half of the century before the system was transported to the New Zealand society. Any consultation of crime statistics for any age must bear in mind that these statistics do not necessarily reflect actual crime rates. The rates themselves can be subject to changes over time caused by legal and police developments as well as by changing social conditions and "real" changes in criminal activity - yet despite these provisos it is possible to conclude, along with Gatrell and Hadden, that

It will be clear that for most purposes the value of the nineteenth-century criminal statistics is not seriously affected by the factors discussed above. Certainly they constitute evidence of more considerable importance than has been usually acknowledged.

(ibid., p.361)

It is also the case that with this thesis the central concern is with comparing the relative treatment of men and women by the court system, and thus if crime statistics do in fact reflect more the processes of law enforcement than the incidence of criminal offending then that is not so problematic as far as this topic is concerned. For essentially what is being attempted here is the identification of how sex role stereotypes

prevalent in a society may be translated into courtroom practices, and thus our declared and intended focus is more on the activities of the law enforcers than the law breakers. Thus my particular interest is not necessarily concerned with asking why, for example, Minnie Dean murdered the babies in her care, but in seeking to determine how she was viewed and treated as a result of those actions, and whether such courtroom behaviour reflected the prevalent female sex role stereotypes of the day.

Having established both the interest value and usefulness of the data as well as some of their limitations, we shall now turn to an examination of the actual material itself, noting first the patterns in male and female criminal offending before going on to consider in more detail, qualitatively as well as quantitatively, the trends in sentencing.

ANALYSIS OF CANTERBURY COURT DATA FOR THE SUPREME COURT, 1852-75
AND 1888-97, AND THE CHRISTCHURCH MAGISTRATES COURT, 1888-97

1) NUMBER OF CASES

The total number of cases heard in the Canterbury Supreme Court for each of the two periods 1852-75 and 1888-97 is remarkably similar (963 cases in the first period and 973 in the second), while even the two months per year sample of Magistrates Court cases for the 1888-97 period yielded a total of 3,172 cases. All these court populations are similar in that by far the majority of offenders appearing before each was male. Thus 872 (or 90.5%) of the offenders appearing before the Supreme Court in the Provincial period were male, compared with 906 (or 93.1%) of offenders in the 188-97 Supreme Court period, and 2,639 (or 83.2%) of those appearing before the Magistrates Court. This means that the number of women was very small for both Supreme Court periods (91 and 67 cases), while it was much more significant in the Magistrates Court period (amounting to a total of 533 cases heard). The proportion of cases involving women actually dropped between the two Supreme Court periods from 9.5% to 6.9% of the total cases heard, while in the Magistrates Court the proportion was considerably larger at 16.8%. Thus the ratio of women to men appearing before the Courts was 1:10.5 for the Supreme Court during the Provincial period; 1:14.5 for the Supreme Court 1888-97; and by comparison 1:6 for the Magistrates Court 1888-97.

If the drop in the proportion of Supreme Court appearances for women is a real one, then in some ways we are faced with an even larger "drop" than at first seems apparent. For one would have expected the proportion of

women appearing before the Supreme Court to have been smaller during the earlier period when women constituted a proportionally smaller part of the total population of Canterbury.⁷

A consideration of the relative proportion of cases resulting in conviction or discharge as outlined in Table 1, is interesting at this stage.

TABLE 1
CONVICTION RATES: PERCENTAGES OF COURT
APPEARANCES RESULTING IN CONVICTION

	M	F
	%	%
Supreme Court 1852-75	68.2	53.8
Supreme Court 1888-97	72.0	65.7
Magistrates Court 1888-97	70.3	80.0

From the above table we can see that approximately 7 out of every 10 males appearing before either Court, and over either of the time periods, were convicted of the offence charged. Initially only approximately 5 out of every 10 cases involving women resulted in conviction in the Supreme Court, this proportion rising to 6.5:10 in the later Supreme Court period, while those women appearing before the Supreme Court in the

7 For example, the ratio of men to women in Canterbury in 1866 was only 100 men to every 46 women, but by 1876 it had evened out to 100 men to 82 women (largely as a result of the introduction of free female emigration). The gap narrowed still further as the century progressed, standing at 100 men to 92 women in 1886, and 100:94 by 1896 (New Zealand Statistical Yearbooks).

nineteenth century always had slightly less chance of being convicted than their male counterparts (although their chances of conviction increased as the century wore on), while in the Magistrate's Court the opposite trend seems to be evident with women running a greater risk of conviction.

Two key variables need to be separated for consideration when trying to account for what seems to be a relatively constant pattern in conviction rates for men compared with a growing trend towards higher proportional rates for women - namely the time dimension, and the differential nature of the offences dealt with by each court. On the first of these there may have been an increasing tendency for the Courts to perceive the women appearing before them as guilty. Thus it could be argued that as the century wore on, women were deemed more accountable for their actions and hence ran a greater risk of having criminal guilt attributed to them.⁸ Alternatively, the relatively low conviction rate of the earlier period may have resulted in fewer persons, either lawyers or prosecutors, being prepared to risk the time and money involved in defending women in the Supreme Court, with the result being that only those cases where there was considerable evidence against the accused, or those in which the defendant was more likely to plead guilty, were heard in the later period.

The second dimension involves considering the nature of the two different Courts and the offences committed. To some extent the more serious infringements dealt with in the Supreme Court approximate to the "criminal" definition, while many of those offences dealt with in the Magistrates Court can be more accurately described as "moral" or public order offences.

8 Some support for this view will become evident in Chapter 4, where we consider the effect of the legal presumption of coverture (and its subsequent abolition in 1893) on female conviction rates.

A criminal act need be performed only once for a person to be tried for it, while moral and public order offences may not involve any particular criminal act as such but rather reflect a particular way of life seen as offensive to public decency (hence the large number of convictions for vagrancy, drunkenness, prostitution and so forth).

Through our earlier review of the criminological literature on female offending, we can see the extent to which the application of the criminal law to women has characteristically been more preoccupied with a woman's perceived immorality than with her criminality. The identification of the lower court with the "lower" offences may have meant that the very fact of a woman even appearing in the Magistrates Court may have seemed tantamount to condemnation in itself. In other words, for a woman to appear in a court dealing largely with what were seen as the "gutter-type" offences may have led the magistracy to assume a greater likelihood and degree of degeneracy on her part than on that of her male counterpart. Hence we have one possible explanation of why a greater proportion of women than men appearing before the Magistrates Court were convicted. However, lest we overlook the obvious, it should be pointed out that the differential is in part explicable in terms of the higher proportion of women appearing on drunkenness charges which characteristically carry the highest rates of conviction of all offence types.⁹ Having hinted at differences in the proportions of male and female offenders convicted for each offence type, it is probably advisable now to consider these in more detail.

9 For both men and women, 99% of all those charged with drunkenness were subsequently convicted and sentenced.

2) NATURE OF THE OFFENCES

For the purposes of comparative analysis the offences dealt with by the courts have been classified into the following broad categories:¹⁰

For the Supreme Court:

- i) Offences against the Rights of Property - which include all larceny offences, receiving stolen property, robbery, burglary, extortion, forgery, fraud, arson, counterfeiting and wilful damage.
- ii) Offences against the Person - which include murder, manslaughter, wounding with intent, assault, attempting to procure an abortion, suicide, and bigamy.
- iii) Offences against Morality and Public Welfare - which include rape, indecent assault, sodomy, bestiality, incest, brothel-keeping, sexual indecencies with young girls, obscene language, and indecent exposure.
- iv) Offences against the Administration of Justice - which include perjury, corrupting witnesses, and escape from custody.
- v) Miscellaneous Offences - which are adapted here to cover breaches of specific acts and statutes, but also include cases of the wounding or malicious killing of animals.

¹⁰ Based on the classification used by the New Zealand Police (adapted from Police Reports).

For the Magistrates Court:

The above categories were all retained in analysing Magistrates Court data in the sense that less serious infringements of each offence type could be dealt with in this way, but the following extra categories had to be added in order to cover the wider spectrum of offences handled in the lower court:

- vi) Offences against Public Order - which are generally concerned with persons being rogues or vagabonds, having insufficient means of subsistence, fighting or being drunk in a public place, and so forth.
- vii) Liquor and Licensing Offences - which are taken to include in the main offences by licensees or barpersons over the sale or supply of alcohol, or to the granting or breaching of prohibition orders.
- viii) Welfare offences - which principally include those prosecuted under the Destitute Persons Act and ordered to pay towards the support of other family members, as well as other acts requiring the legal support of wives and children.
- ix) Offences under the Lunatics Act - which refer mainly in an age still prone to viewing insanity as a crime, to persons committed to asylums, but also include orders for the relatives of the insane to pay maintenance towards their support.

The fact that the categories are not identical for both Courts, and that they often cover different offences or degrees of seriousness in each Court, means there is little point in conducting much cross-Court

comparison. Thus the approach adopted here will involve comparing the Supreme Court figures for each of the time periods, and then analysing the Magistrates Court material insofar as it presents us with information enabling a greater overall understanding of the full spectrum of nineteenth century criminal offending.

Supreme Court, 1852-75 and 1888-97

The following table indicates quite a marked switch in the nature of the convictions recorded for each sex.

TABLE 2
OFFENCE TYPES: PERCENTAGES OF MALE AND
FEMALE CONVICTIONS

	SUPREME COURT 1852-75				SUPREME COURT 1888-97			
	M		F		M		F	
Property	464	78.0%	42	85.8%	561	85.9%	30	68.2%
Person	54	9.1%	3	6.1%	44	6.8%	10	22.7%
Morality	47	7.9%	1	2.0%	25	3.8%	4	9.1%
Admin. Justice	15	2.5%	3	6.1%	8	1.2%	0	0
Miscellaneous	15	2.5%	0	0	15	2.3%	0	0

In the earlier period proportionately more female than male convictions arose from property offences, while more male than female convictions arose from offences either against the person or against morality. In the 1888-97 period we find this has changed - proportionately more male than female convictions now arise from offences against property. And while there has been a relative decline in the proportional significance

of male offences against the person and against morality, there have been very real marked increases for women in these two categories (although the absolute numbers here, especially for female offences against morality, are very low).

For both males and females, however, offences against rights of property constitute by far the largest Supreme Court offence category in each period, and this is the only category numerically large enough to justify being broken down into specific offences. It is interesting that of those charged with a property offence in the 1852-75 period, 70% of males compared with only 59% of females were actually convicted. By the later period this rate of conviction was much more even at 75.3% and 73.1% respectively.

Within the property offences category, the majority of convictions for both men and women arose from cases of either larceny or forgery and uttering - thus larceny accounted for 19% of all male property convictions 1852-75 and 24.1% in 1888-97, while forgery accounted for 21% and 23.4% respectively. The corresponding figures for females are that larceny accounted for 35% of all female property convictions in the earlier period, dropping slightly to 30% in the later, while the proportion of women convicted for forgery rose from 7% to 23%. Thus the most significant increase seems to have been in the proportion of women convicted of forgery, which could reflect such social changes as the improved literacy rate of women towards the end of the nineteenth century (Graham, 1981, p.138; Sutch, 1973, pp. 74-84), and/or changes in their occupational and economic status (Olssen, 1980) - but again it must be reiterated that the absolute numbers in this startling percentage increase are four actual cases (from only 3 to 7 cases).

The nature of the property acquired from larceny offences was not always recorded, unfortunately, but data from the 1852-75 Supreme Court period indicate that for males, both clothing and money feature prominently (and account for approximately 17% each of all property stolen), with the theft of watches and jewellery following at 11%. For women, clothing was even more popular, being the nature of the items stolen in 40% of cases, followed by cutlery and crockery (20%) and with both money and watches/jewellery accounting for 13% each.¹¹ Thus it seems that males stole a wider and more diverse range of goods (including pistols, saddles, alcohol, building materials and so on), while women's theft consisted of articles relating primarily to the domestic sphere of existence.

It is possible that the involvement of women predominantly in larceny offences in the earlier period, and to a slightly lesser extent in the later, reflects in part the restricted access they faced in terms of other arenas for criminal endeavours - for example, very few women filled the types of occupational position conducive to embezzlement, or were in situations where they could have stolen horses or cattle. The tendency for property ownership to be a male attribute may well have rendered women presenting cheques susceptible to greater scrutiny than their male counterparts - thus minimising their involvement in forgery and uttering. Possibly this could help to explain why this, the largest property offence category for males, was so much smaller for females (accounting for only 7% of all female property convictions).

Women may actually have been socially advantaged, however, when it came to being able to obtain money and goods under false pretences - offences

11 This trend is strongly reminiscent of that indicated in Chapter 2, whereby contemporary female shoplifting offences were characteristically oriented towards the acquisition of clothing, cosmetics and other items supportive of the traditional feminine role (Department of Social Welfare, 1973, p. 18; Weis, 1976, p. 24).

constituting 19% (8) of all female property convictions and only 10% of male convictions. By adopting the status of a servant and pretending to have been sent out on errands for their employers, women were able to acquire not only cheese and herrings but also some of the trappings of Victorian feminine finery. Seventeen year old Lucy Poore pretended she was Mrs Cracroft-Wilson's servant and included amongst her drapery acquisitions one feather and an artificial flower (Supreme Court Files 295 and 296, 1865). It is possible, therefore, that her involvement in crime derived more from a desire to fulfil the image of womanhood held before her than to attain a more "masculine", crime-incorporating image.¹²

With regard to offences against the person, we find that these accounted for 9% (54) of all male convictions during the provincial period and 6.8% (44) during the 1888-97 period, while for women the proportion rose from 6.1% to 22.7% (or, in absolute numbers, from 3 to 10 cases). Probably what is most significant here is that the proportion of all males charged with an offence against the person and subsequently convicted remained constant between the two periods at 60%. By contrast, the likelihood of a woman similarly charged being convicted increased almost two-fold from only 27% during the earlier period to 48% in the later years. In terms of the specific offences committed, 25% of male convictions for offences against the person were for assault and robbery or robbery with violence (in other words, ultimately connected with property offending) and 20% for assault. The later period saw one woman being jointly convicted with two men of assault and robbery, and two women (and, interestingly, no men) being convicted of murder.

A brief consideration of the convictions for murder is particularly interesting. In the earlier Supreme Court period four out of the five convictions involved males murdering women, while only one case involved a man killing another man. However, the three convictions for manslaughter

all involved men killing other men and these had originally begun as indictments for murder but with the charge later being reduced. Thus it could be suggested (although tentatively because of the small numbers) that a male may have been more likely to be convicted of murder if his victim was a woman than a man.

Of note also in the cases where women were murdered is the fact that in two instances the victims were killed by their respective spouses, in both cases the spouses having the death sentence commuted to penal servitude for life. In contrast, the other two cases involving women unrelated to the defendants resulted not only in the bestowing of the death sentence but also in its (and their) execution. It almost seems as though men had more right to murder their wives than to murder either men or other women, as if the property rights of husbands included a built-in disposal clause! However, the unavailability of more detailed information on these cases renders such ~~speculations~~ very tentative, and it must be remembered that the husbands who murdered their wives still received sentences of penal servitude for life in lieu of execution.

During the 1888-97 Supreme Court period four males and four females were charged with murder, but all were discharged apart from two of the women - Anna and Sarah Jane Flanagan - who were convicted of the murder of Sarah Jane's baby in 1891 (LT, February 26th, 1891). The case was portrayed in the newspapers as a particularly gruesome one, provoking intense outcries against the brutality of the two women, but when this was translated via the courts into the proclamation of the death penalty, further public pressure was successfully brought to bear to have this commuted to penal servitude for life instead. Minnie Dean, the only woman ever executed in New Zealand (New Zealand Heritage, IV, 54, pp. 1509-1512),

swung from the rope in Lyttelton Gaol, but the offences she committed in disposing of the children placed in her care had occurred further south and her trial was conducted in Invercargill (LT, Augst 1st, 1895).¹³

For a woman to violate the maternal instinct and slaughter helpless, dependent children seems to have been the key variable involved in affecting the extent to which females were viewed as accountable for the crimes of violence they committed. For the most part, the relatively few female convictions for offences against the person and their comparatively high rate of discharge suggest a possible reluctance on the part of the Courts to perceive women as capable of intentional violence. Women belonged more appropriately, it seems amongst the victims rather than the perpetrators of violence. Overall, one can tentatively conclude that by the late nineteenth century proportionately more women were appearing before the courts charged with offences against the person, were being convicted of such offences, and were even being sentenced in a manner more commensurate with that of males - a trend which will become more evident later in the chapter.

Although the numbers involved are very small, it is worth mentioning here the category of offences against morality and public welfare, if only to point out the particular convention which the Victorians applied in categorising certain offences. For virtually every single male conviction in this category derives from offences obviously seen as sexual and immoral, but which could more appropriately be deemed acts of violence against the person (with most of the persons being women or children). Hence 64% of male convictions in this category in the earlier period arose from sexual assaults on women and girls, with the remainder arising mostly from bestiality or occasionally from sodomy, and with one conviction against

a male for keeping a bawdy house. By the later period the actual numbers of males convicted of offences against morality had dropped from 47 to 25, but all of the latter consisted of such offences as rape, carnally knowing a girl under 14, and so on. Yet these offences were all deemed offences against the public welfare of society rather than against the individual, since they were primarily viewed as violations of male proprietary rights.

By contrast, the very small number of female offences in this category (1 in the first period and 4 in the latter) all arose from charges of keeping a bawdy house. However, the point which needs to be made here is that the actual contents of what the police define as offences against morality may appear misleading given our understanding of "moral" offences as written about in the criminological literature. In the Supreme Court this category refers principally to cases of sexual assault and, as we shall see later, although brothel-keeping charges could be heard in this Court, they were not a common charge, since prostitutes tended to be more often dealt with in the Magistrates Court and under other offence types.

Very few offences, either numerically or proportionately, fall into the categories either of offences affecting the administration of justice or the miscellaneous category - the majority of convictions in the first category arose from instances either of perjury or of escaping from custody (and involved only two women being convicted of the former and one of the latter in the 1852-75 period, and none convicted of either in the second), while the miscellaneous category was accounted for mostly by male breaches of such laws as the Bankruptcy or Customs Acts.

To summarise this consideration of the nature of the offences for which men and women were appearing before the Supreme Court in nineteenth century Canterbury, for both sexes by far the most common offence category was that of property offences, and in particular the offence of larceny.

In the case of males property offences accounted for an increasingly greater proportion of their offences over the nineteenth century. In the case of women, however, the reverse trend seemed to have operated, with greater proportions being convicted of offences against the person and against morality by the end of the century. The small numbers of women appearing in the Supreme Court make it unwise to engage in excessive speculation on such findings. However, a clearer picture of women and crime in the nineteenth century may emerge when we consider the material obtained from the Magistrates Court.

Magistrates Court, 1888-97

The nature of the offences for which males and females were convicted in the Magistrates Court is summarised in Table 3.

TABLE 3

MAGISTRATES COURT CONVICTIONS, 1888-97

	MALES		FEMALES	
	No.	% M Convictions	No.	% F Convictions
Property	234	12.6	35	8.2
Person	80	4.3	12	2.8
Morality	45	2.4	48	11.3
Admin. Justice	1	0.05	0	0
Public Order	582	31.3	232	54.5
Liquor	46	2.5	3	0.7
Welfare	212	11.4	10	2.3
Miscellaneous	592	31.9	47	11.0
Lunatics Act	64	3.5	39	9.2

From Table 3 we can see that there is clearly one major offence category for females - that of offences against Public Order, and this category is also one of the two principal offence types for males, along with those offences classified as Miscellaneous. A total of 235 women appeared before the Court on public order offences, and nearly 99% of them were convicted. By far the majority were convicted of being drunk in a public place (88.4%, or 205 of the 232 convictions), with the remainder being mostly convicted for having insufficient means of support. The pattern is similar for males insofar as the highest proportion were convicted for drunkenness (90.9%, or 529 of the 582 convictions in this category). However, the remaining male convictions were divided between cases of having insufficient means and instances of disorderly behaviour, breaches of the peace, and so on.

Yet while the proportions of males and females convicted of drunkenness were similar, drunkenness offences accounted for 48% of the total female convictions for the period compared with 28% of all male convictions. Such a disparity prompts further comment and investigation.

The high proportion of women convicted of drunkenness at first seems to challenge that part of our "historical" consciousness which more readily conceives of women in the temperance unions struggling to save men from the demon drink. However, while the proportion of females convicted of drunkenness is much higher than for any other offence category, in numeric terms we are still speaking of 205 such convictions against women compared with 529 against men. And evidence from other sources also shows that there was an even smaller number of individual women involved in this

figure, since the multiple conviction rate for females convicted of drunkenness is considerably higher than that for men.¹⁴

However, the significance of drunkenness as the major female offence category cannot be ignored. In part it is explicable in terms of the relatively low rate of convictions of women in other offence categories, but it is unlikely that such a factor alone is sufficient to account for the discrepancy. Attitudes towards male and female drunkenness differed considerably in early New Zealand, for while the pub was accepted as lying at the heart of male culture (Phillips, 1980, p. 221), the opposite sentiment was expressed about women. The role of women as the moral guardians of society (elaborated on in Chapter 5) meant that wives were meant to wean their husbands away from the bottle - not join them in consuming its contents (Anderson, 1981, p. 70). Much concern was expressed over the employment of barmaids during the social purity crusade of the 1890s (Bunkle, 1980, p. 71), with one letter to the Lyttelton Times in 1894 emphatically declaring that

females are entirely out of place in a public house, and the sooner the law is altered so as to debar their employment the better it will be for their morality.

(LT, October 9th, 1894).

That neither alcohol dispensing nor consumption were easily tolerated in women is reflected in "Hopeful's" comments about the efforts taken to observe female drinking habits -

14 A report from England for the year ending Michaelmas, 1873, indicated that only 1:65 of the convictions of men for drunkenness that year had been preceded by 3 or more convictions, compared with 1:39 of the convictions of women (LT, March 3rd, 1895). However, while this report indicated 2.6% of the total number of women convicted for drunkenness to have 3 or more previous convictions, Robyn Anderson's material on drunkenness in Auckland, 1845-70, states that 18.6% of the women convicted for drunkenness had been convicted 4 times or more in each year (Anderson, 1981, pp. 78-79).

Women drink their beer here as at home, but it is done in a very sly way as if there was some crime or stigma attached to it, they send their children with milk-cans for it, or go for it muffled up so as not to be recognized, and they smuggle a good deal in, in various surreptitious ways.

(Hopeful, 1887, p. 147)

Thus a woman obviously intoxicated in public was likely to attract more attention and hence intervention than her male counterpart.

The offence of drunkenness may also have been used to get prostitutes off the streets at times. A close relationship existed between alcohol and prostitution (as will be explored further, with case studies, in Chapter 5), and alcoholism was in effect an occupational hazard for those women whose careers were centred round the pubs and gin palaces. The 'invasion' of women into these "male" arenas undoubtedly contributed to the perceptions of alcohol as a "de-womanising" agent (Anderson, 1981, p. 70) - an argument strongly reminiscent of the masculinisation stereotypes advanced in Chapter 2. The public drinking life of prostitutes made them vulnerable to police surveillance, and, as we have seen, apprehensions for drunkenness were more easily sustained in court than were those for any other type of offence. The minutes of the Gaols Committee Report in 1878 included testimony from a Visiting Justice as to the high number of female recommitals to gaol. He lamented the fact that

There are women who are never out of gaol practically. If they are let out one day, they are back in again the next!

When asked if such women were prostitutes, he replied strongly in the affirmative, adding that "they are brought in on charges of drunkenness and vagrancy principally" (AJHR, 1878, Vol. 2, I-4, p.13). The extent to which drunkenness charges were used as a conscious ploy to get prostitutes

off the streets may be somewhat debatable, however, since the very public life lived by many prostitutes may have made them especially susceptible to police attention. Their obvious rejection of the ideal female stereotype in one area may, then, have predisposed them to a more scrutineering gaze in other areas as well.

Offences against Public Order was the largest category placing women before the Magistrates Court, whereas the most common category for men was that of Miscellaneous offences. It accounted for one-third of all males appearing in Court, compared with only 13% of all cases involving females. The greater proportion of males in this category probably reflects in large part their greater involvement in the public life of the province and hence their greater violation of by-law infringements for trading etc. Also, some offences in this category would be the result of males being prosecuted in situations where their higher social position intervened - for example, it would usually be the male who would be prosecuted for not having registered the family dog since he was seen as owning all chattels on his property - wife, children and animals included.

The two second most common offence categories for women consisted of offences against Morality, and Miscellaneous offences - each accounting for 13.3% of the total female cases appearing before the Court but with offences against Morality carrying a slightly higher conviction rate. It seems at least 12 of the 47 Miscellaneous offences involved women convicted of prostitution-related offences, but which had been dealt with under Christchurch City By-law Regulations. Other prostitution offences were dealt with under a variety of headings within the offences against Morality category (for example, loitering and importuning passers-by, or behaving in a riotous manner in a public place). Of the 48 women convicted of offences against morality, two-thirds were associated with prostitution, while the remaining were convicted for obscene language - apart from one

instance of indecent conduct arising from a woman "committing a grossly indecent act with (a male) within view of a public place, to wit a right of way in Tuam Street".

Information obtained from the Police Gazettes during the years in which the Contagious Diseases Act was in operation (1869-1886) reveals something of the latter's utility in policing prostitutes' lives. Women "absenting themselves from medical examinations under the Contagious Diseases Act" characteristically received sentences of seven days imprisonment with hard labour, and they could be repeatedly arrested and imprisoned on this charge or, if found to be diseased, they could be detained in the Reformatory. Within one two-week period in December, 1875, Jane McMahon was twice apprehended by the police for "examination" as well as being picked up once on a drunkenness and vagrancy charge (Police Gazette, Vol. XIII, No. 23, 1875).

Offences against Morality was the only ~~category~~ for which female convictions numerically exceeded those for males. While the dominant offence for women in this group was undoubtedly prostitution, more than one-third of the 45 male convictions were for obscene or insulting language. A further 8 convictions were for committing indecent acts in public (usually urinating, occasionally fornicating) and the remainder were for indecent exposure. (Several men were discharged in court on other charges, however, such as possessing obscene pictures for sale or exposure).

The overall impression of this offence category is that there was a common code of morality operating, admonishing both males and females to refrain from either using obscene language or committing indecent acts in public. However, there was also an additional code operating for (or against!) women, forbidding them to solicit customers for prostitution, but

in no way censuring the buyers, potential or actual, of the offered goods. The males who were censured for their involvement in prostitution however, were those who made money out of the trade by keeping bawdy-houses themselves (such as Martin Cash, the policeman referred to earlier), or who lived on the earnings of female prostitution (a point taken up later in Chapter 5).

The fourth most common offence category for women was for a "crime" no longer considered criminal - being a lunatic. There were 39 women committed to an asylum on these grounds compared with 54 men (plus a further 10 men ordered under the Lunatic Act to pay maintenance for the support of relations in the asylum). More men than women were classified insane, but lunacy accounted for 9% of the total female convictions and for only 2.9% of the male, meaning that it was a more significant "crime" category for women than for men. Possibly the smaller absolute number of females reflects the greater ease of having women admitted to asylums without needing recourse to court committal orders. It is also possible that the grounds on which men and women were deemed to be lunatics differed. In the case of women the sanity issue often seems to have arisen in the context of assessing their criminal guilt for a usually serious offence, whereas more men may have been committed to asylums for care after being apprehended as drunkards or vagabonds (Primrose, 1968). Little can be said conclusively, but if it were the case that more asylum committals of women arose from serious criminal charges then it would be consistent with a perception of women as less criminally responsible than their male counterparts.

Offences against Property was the next most common category for women, accounting for 35 (or 8.2%) of their convictions, whereas this was the third most common category for men (accounting for 12.6% of male convictions). Within this category the majority of convictions for both sexes arose from larceny charges (62.8% of female and 65.8% of male property

offences), with the only other significant offence being property damage (22.8% and 14.5% of female and male convictions respectively). Overall, then, the pattern of male and female offending in this category was fairly similar.

The only other offence category in which there was an obvious male/female difference was that of Welfare offences. These accounted for only 2.3% of the total number of female convictions but for 11.4% of male convictions. This contrast is further heightened when we realise that most court orders in this category involving women were brought under the Industrial Schools Act, which in all but one case involved committing a minor to detention in a State industrial school. Sometimes this was because they had committed offences but on other occasions it was to "rescue" them from the unsavoury influences contained within their homes - to "save" them from having to live with prostitutes or habitual drunkards. Thus in 1888 Henrietta Kyle, aged 14, was charged with associating and dwelling with prostitutes and committed to Burnham Industrial School (LT, January 20th 1888¹⁶).

For males, however, nearly 60% of convictions in this Welfare offences category were made under the Destitute Persons Act and commonly involved the Court's ordering that they materially provide for their deserted wives and families, their illegitimate children or their ageing parents. However the actual number of women petitioned for support is very small (26 in total, 16 of whom were discharged) and is very much greater

16 This theme of intervention for the sake of protection is reminiscent of the material on female promiscuity and incorrigibility discussed in Chapter 2, while incidents relating to the "protection" of the children of prostitutes will be discussed in more detail in Chapter 5 of the thesis.

for males (424 cases in all, exactly half of which resulted in a discharge). If we consider only petitions for welfare support made under the Destitute Persons Act, more men were discharged than convicted (143 discharged compared with 126 convicted), and similarly for cases brought to Court under the Married Women's Property Protection Act (18 discharged and 14 convicted). The few cases presented in Court as "Wife Desertion" (rather than being presented under the relevant act) all resulted in the husbands being discharged of their responsibilities, as did 82% of all cases cited as "Bastardy".

However, from the court records it does seem that towards the end of the decade being studied there was an increasing tendency for males to be convicted and ordered to pay maintenance towards their wives and the careers of their children (Eldred-Grigg, 1980, pp. 84-85; Sutch, 1973, Chapter 5). On one level this seems to coincide with the growing trend towards the emancipation of women in the sense that women were gradually coming to be seen as possessing at least some "rights" in terms of their relationships with men. Yet such philanthropic concern also reflected a State paternalism towards women which sought to legalise their economic dependence on men.

As noted earlier a comparison between the Supreme and Magistrates Courts over offence types may not itself be very meaningful. It is more helpful to combine the totals within each category in order to achieve some overall picture of offending in both Courts taken together for the same period, as set out in Table 4.

TABLE 4
TOTAL NUMBER OF CONVICTIONS, 1888-97, SUPREME
AND MAGISTRATES COURTS COMBINED

	MALES		FEMALES	
	No.	% of Convictions	No.	% of Convictions
Property	795	31.7	65	13.8
Person	124	4.9	22	4.7
Morality	70	2.8	52	11.1
Admin. Justice	9	0.4	0	0
Public Order	582	23.2	232	49.4
Liquor	46	1.8	3	0.6
Welfare	212	8.5	10	2.1
Miscellaneous	607	24.2	47	10.0
Lunatics Act	64	2.5	39	8.3

Table 4 shows that offences against Public Order still predominate for women by accounting for just on half of all female convictions, while male convictions tend to be divided amongst three dominant categories - specifically, Property, Miscellaneous and Public Order offences. Thus the proportion of female convictions arising from Public Order offences was more than twice that for males, while offences against Morality accounted for approximately four times the proportion of convictions recorded for women compared with men. However, the differences between male and female "morality" offences such as prostitution were often economically motivated in much the same way as were property offences amongst men. Thus the disparity may reflect more the different opportunities for economic survival accorded women in Victorian society, and its double standards of morality, than substantive behaviour differences between men and women.

Overall, it seems that late nineteenth century Canterbury women were particularly vulnerable to conviction if found on the streets either drunk or without means of support, and were also economically vulnerable in that the Courts were not correspondingly stringent in ensuring that their husbands and/or the fathers of their children were compelled to provide for them. The translation of the social realities of female vulnerability into perceptions and typifications of feminine frailty and weakness is taken up in much more detail in Chapter 4.

3) REASONS FOR CONVICTION

It may be useful now to consider the reasons for conviction in terms of the relative proportions of each sex being convicted either because they actually pleaded guilty, or because they pleaded not guilty but were subsequently tried and found guilty. For the Magistrates Court a third alternative was presented by the possibility of defendants in some cases being able to be tried without their ever making a court appearance - a fact which makes cross-Court comparisons somewhat difficult.

TABLE 5

REASONS FOR CONVICTION

	SUPREME 1852-75		SUPREME 1888-97		MAGS. 1888-97	
	M	F	M	F	M	F
Pleaded Guilty	37.9	40.8	64.3	56.8	53.3	62.8
Tried and Found Guilty	62.1	59.2	35.7	43.2	29.1	29.7
No Court Appearance					17.6	7.5

Table 5 shows that the proportionate sex differences in each category are not dramatically different, although some of the trends may be worth commenting on briefly.

During the 1852-75 Supreme Court period, proportionately slightly more women than men pleaded guilty, but this trend was reversed in the 1888-97 period. No clear-cut explanation can be offered, but there may have been a slightly greater reluctance on the part of juries to convict a woman of a crime in the earlier period. However, the major trend, and one which seems to apply reasonably consistently to both sexes, was for the majority of both males and females to stand trial in the earlier period but to plead guilty in the later, which could reflect increasing legal pressure to persuade defendants against standing trial, or increasing legal costs for making a defended case.

In the Magistrates Court, 1888-97, we also find the majority of both men (53%) and women (63%) pleading guilty. It is possible that women were under more pressure to admit guilt than their male counterparts, and if this were a moral rather than an economic pressure, then it was perhaps the case that women who ended up in court were made to feel much more aberrant than men. This would be consistent given the material noted earlier stressing the exceptionality of women as criminal offenders (e.g. Smart, 1976, p.34). This may also help to explain the disparity in guilty pleas between the Magistrates and Supreme Court for each sex, since a lower court appearance for a woman may have been more morally incriminating than an appearance in the high court. (It is also possible that only those women with a particularly strong case against them were taken to the Supreme Court, such that attempting to defend the charge would often be perceived as futile.)

However, the explanation could also rest in the smaller proportion of women being found guilty in the absence of any court appearance, which in turn reflects the nature of the offences committed. For the fact that 17.6% of males were found guilty in absentia compared with 7.5% of females may reflect the greater involvement by males in the Miscellaneous category for

minor infringements against city by-laws and the like for which court appearances were equalised for each sex, and the proportions found guilty are already fairly equal, then the proportion of offenders pleading guilty would likewise then be equalised. Hence it seems that probably few startling disparities are evident when it comes to the overall breakdown of reasons for conviction - in other words, the reasons why males and females were being convicted may be very similar, and the significant cross-sex differences may thus reside either in what happens in policing and so on before cases ever reach the courtroom, or in terms of the sentences passed on each following conviction. Information as to the former is unfortunately not available - being more in the area of police discretion - but the latter will be dealt with in some detail later in this chapter.

4. REASONS FOR DISCHARGE

Consideration of the various grounds on which offenders were discharged is somewhat more complex in that there seem to be very different categories for the two counts, although these can be equated to some extent. (See Tables 6A and B.)

TABLE 6A

REASONS FOR DISCHARGE

	SUPREME COURT 1852-75				SUPREME COURT 1888-97			
	M		F		M		F	
Not Guilty	177	63.9%	30	71.4%	134	53%	15	65.2%
No Bill	73	26.3%	7	16.6%	61	24.1%	7	30.4%
Bill Ignored	2	0.7%	1	2.4%	21	5.3%	1	4.4%
Crown declined to prosecute	25	9.0%	4	9.5%	37	14.6%	0	0

TABLE 6B

REASONS FOR DISCHARGE

	MAGISTRATES COURT 1852-75		MAGISTRATES COURT 1888-97	
	M		F	
Guilty but discharged	43	5.5%	15	14.4%
Not Guilty	267	34.3%	43	41.3%
Not Served	131	16.8%	11	10.6%
Withdrawn	159	20.4%	21	20.2%
No Court appearance	179	23.0%	14	13.5%

Not surprisingly, the major reason why an offender of either sex was discharged of an offence is because he or she was found not guilty and dismissed. For males the proportion of those who appeared in the Supreme Court, 1852-75, and were found not guilty, was 64%, dropping to 53% in the period 1888-97, while the proportions for women dropped from 71.4% in the earlier period to 65% in the later. In the Magistrates Court smaller proportions of offenders are contained in this category, with 34.3% of males and 41.3% of females being discharged on the basis of their being found not guilty. The fact that other grounds were both more numerous and more prevalent in the Magistrates Court probably reflects in part the greater ease with which charges could be laid in this court and the lesser seriousness of the offences being tried there. What is evident overall, however, is that the same trend appears to remain constant in both courts and across both time periods - namely that women offenders have a slightly greater chance of being tried and found not guilty than do male offenders. What still remains problematic is whether this reflects less readiness to convict a woman in the dock, or whether it may be the case that more innocent women find themselves in court in the first place.

Of interest also is the fact that in the Magistrates Court 14.4% of all females discharged had actually been tried and found guilty but nevertheless were then cautioned and dismissed, compared with only 5.5% of the males discharged. This may reflect an attitude that the experience of actually appearing in court and having a guilty plea recorded against one's name was a sufficient punishment in itself for some women. When we consider the proportions discharged overall, we find that proportionately more women than men were either found guilty and discharged (14.4%) or found not guilty and dismissed (41.3%), making a total of 55.7% of all female discharges. In contrast, only 39.8% of male discharges were on the

same grounds, with over 60% arising either from the offence not being served, being withdrawn or from no court appearance being made. In other words, a male tended to be discharged more often as a result of his not actually standing trial, whereas a female stood more chance of being discharged if she did stand trial. This may reflect in part the fact that more males than females were being charged with offences in the Miscellaneous and Welfare categories, which carried relatively high rates of discharge and greater numbers of offences for which no court appearance was necessary. However, it may also reflect a preference for declaring a woman either not guilty, or if guilty to dismiss her with simply a caution.

5) THE PROSECUTING PARTY

Only the Magistrates Court material provided data as to the names of the prosecuting parties for each case heard, and for offenders convicted these have been analysed in Table 7 in terms of whether the charges were laid by the police, by other formal agencies (such as Councils, Hospital authorities etc.), by male citizens or by female citizens.

TABLE 7

THE PROSECUTING PARTY

	MALES CONVICTED		FEMALES CONVICTED	
Police	1,329	71.6%	373	87.6%
Other formal agencies	216	11.6%	14	3.3%
Males	133	7.2%	32	7.5%
Females	178	9.6%	7	1.6%

From Table 7 it is apparent that most defendants appeared in court as a result of police action against them, although this was more evident in the case of women than men since 87.6% of female defendants compared with 71.6% of male defendants were being taken to court by the police. This disparity may be partly due to the much higher proportion of males being prosecuted by Councils and so forth for by-law infringements, and to the proportionately higher numbers of women picked up by the police for drunkenness.

What is worth noting in Table 7 is that almost the same proportion of men laid charges against men as men did against women (7.2% and 7.5% respectively), while in contrast very few cases arose as a result of women bringing charges to bear against other women. The latter accounted

for only 1.6% of the charges against women, while 9.6% of the cases against men were laid by women. This seems to reflect the tendency for men to violate and abuse women much more often than for women to abuse other women. It undoubtedly also reflects the greater economic dependence of women on men, made evident in the large number of welfare cases arising from women seeking maintenance for themselves and/or their children following desertion, ex-nuptial births, and so on. Thus in terms of the charges laid by citizens it seems that more women may have had grounds for prosecuting men on criminal charges than even men had for prosecuting other men, or than either sex had for prosecuting women.

6) SENTENCING COMPARISONS

It was suggested earlier that possibly the area where one might find the most obvious sex-based differences in the treatment of defendants is that of trends in the sentencing of convicted criminal offenders, and it is to these that the analysis now turns. This area will be focussed on in more detail than the others, largely because the available material is so rich in terms of statistical comparisons and comments via the newspaper reports as to the sentiments expressed in the passing of individual sentences by the Judges and magistracy. Here we have the possibility of making clear, cross-sex comparisons of how both male and female defendants were perceived, and how these perceptions influenced the relative punishments meted out to them.

Supreme Court, 1852-75

Offenders convicted by juries of the Supreme Court, 1952-75, could find themselves subject to punishments ranging from a month's imprisonment to penal servitude for life or even the death penalty. Solitary confinement and whippings could be included, and prison sentences usually incorporated hard labour and a system of rigid punishments for infractions of prison rules (Webb, 1982).

If we consider the overall sentencing pattern, we find that approximately 72% of all convicted males received sentences of one year's imprisonment with hard labour and above, while nearly the same proportion of females received sentences of six months' imprisonment or less. Thus approximately three-quarters of the males faced sentences of one year and above compared with only approximately one-quarter of the females. The maximum sentence imposed on any woman was two years' imprisonment with hard labour. In contrast, 109 males (18.3%) received sentences of three

years or more, including six of who were sentenced to death (three of whom were executed).¹⁷

Part of the discrepancy in sentencing may reflect the imprisonment of men for proportionately more "serious" crimes and women more for offences against public order and morality. In 1895 it was reported that the highest proportion of males in Lyttelton Gaol had been sentenced to penal servitude, while the highest proportion of females were there for sentences of only three months' imprisonment (AJHR, 1895, Vol.3, H-20, p.5). This probably reflects what we will focus on in greater detail in Chapter 5, namely the frequent conviction and short-term sentencing of women on public order and morality charges.

However, apparent leniency towards more female offenders^{was} reflected in the numbers recommended for mercy by the Crown Prosecutor, whereas 6.7% of all males convicted were so recommended (usually on the basis of youth or good character), the comparable figure for women was nearly double at 12.2%, with the reasons cited including such factors as "Extenuating circumstances. Said to be pregnant". A female larceny case involving a 17 year old girl resulted in her receiving only one week's imprisonment, the Judge's stated rationale being:

Had I passed more than a nominal sentence this girl would have been compelled to associate in gaol with females of the lowest character and most abandoned description.

(Canterbury Supreme Court Records, File 146,
1863)

17 It should not be assumed that the short sentences received by women can necessarily be correlated with a relative lack of seriousness in the crimes they committed. In Chapter 4 some of the factors mediating apparent court leniency to women are examined, such as the legal presumption of coverture, and the reluctance to imprison "respectable women".

No such fear was expressed in the case of a 16 year old boy two years later who received six months in Lyttelton Gaol with hard labour for a similar theft.

On occasions where more than one charge was laid against a defendant, the additional sentences bestowed by the court were often little more than nominal for women (generally one to three months from the expiration of their former sentence), while for males either such sentences would be considerably longer (six to twelve months each) or else a very severe sentence was imposed on the first charge (such as three or more years' penal servitude) and then made concurrent. Thus we find Emily Ann Needham (aged 22) convicted in 1869 of two cases of forging and altering cheques (one for £18/10- and the other for £9/10/-) being sentenced to six months' imprisonment with hard labour on the first charge with an additional month for the second (while she was discharged completely of a third case against her) (LT, March 4th, 1869). In 1868, however, Richard Mont (aged 19) pleaded guilty to similar charges (the first involving an order for payment for £2/10/- and the second for £4/10/-) yet received 12 months with hard labour on each charge.

There is evidence, therefore, of a seeming reluctance on the part of the court to mete out equal treatment to male and female offenders. It almost seems as if the more socially disadvantaged women were in society, the more advantaged they appeared to be in the Courtroom! The resolution of this seeming paradox may lie in the ideological cornerstone underlying both these factors - for it was the ideology and stereotyping of women as weak and inferior which both maintained their demeaned social position as non-equals and served to advantage them in the courts. They were advantaged by perceptions of their offences as trivial; of their psyches being too weak to withstand at length the

deprivations of prison life; and probably most pervasively of all of their status as somewhat less than persons in their own right and therefore less accountable (and, by implication, blameworthy) for their actions. (The influence of such perceptions on the courts' treatment of women is explored much more fully in Chapter 4.)

Supreme Court, 1888-97

The consideration of sentencing patterns in the 1888-97 Supreme Court period will be made using comparisons with the earlier period in order to give some indication of changes that may have occurred over time. Whereas in the 1852-75 period 72% of all convicted males and 26% of convicted females received sentences of one year's imprisonment or more, in the later period these figures had dropped substantially for males to 57% while for females it had remained almost constant at 25%. It is possible that the gender-based leniency accorded women in the earlier period may have kept them ~~relatively protected~~, even isolated, from the earlier harshly punitive policies of the colony, and hence changes in the latter were of almost exclusive relevance and benefit to male offenders.

When we consider the imposition of more minimal sentences, particularly those of six months and under, we find that in the later period probation had become a reasonably well-chosen option in sentencing offenders who otherwise would have faced short terms of imprisonment. Thus whereas 23.6% of convicted males and 71.4% of convicted females receiving such minimal sentences in the 1852-75 period, this proportion had risen to 33.1% for males in the later period but had very slightly dropped for females to 70.4%. Again one wonders whether the moves to decrease the severity of sentences throughout the latter half of the

nineteenth century were in effect applicable primarily to males, in the sense that the growing trend towards seeing women as more accountable and hence punishable for their crimes¹⁸ may have cancelled out the effect of such a lessening so far as they were concerned. For one would have expected the same trend to have been evident for both sexes, and for a general lessening in sentencing severity to have been at least reasonably equally experienced by both, instead of the trend to have been apparent only for males, and for an even slightly opposite trend to be observable for females.

In terms of the maximum sentences imposed, taken here as three years imprisonment and above, we find that this figure remained relatively constant for males at 18.3% of all male convictions in the earlier period and 19% in the later. At first this could be taken as evidence against the alleged decreasing severity of sentences, or at least be construed as suggesting that this lessening may only have applied at what was already the more minimal end of the scale. But when we consider the actual nature of the sentences imposed, we find that in the 1888-97 period no male was executed and only one committed to penal servitude for life, in contrast to the earlier period which saw six males given the death sentence, three of whom were actually executed, and two transported out of the colony.¹⁹ Evidence that the offences were becoming less severe may be provided if we consider the proportion of sentences of three years and longer duration which fall into the more extreme end of the scale, that is, sentences of seven years imprisonment and upwards. In the earlier period

18 Evidenced in part by the abolition of the legal presumption of coverture in 1893 (see Chapter 4).

19 Transportation was replaced by penal servitude in 1854 (Webb, 1982, p.12).

approximately 12% of maximum sentences were of such severity, while by the later period this had in fact dropped to only 3.2%.

As regards women, the proportion of convicted women sentenced to three years' imprisonment and above was 9% in the later period, while no females had received sentences of such length in the earlier period. Between 1852 and 1875 the longest sentence imposed on any female offender had been two years' imprisonment with hard labour - now it seems that the courts may have been more willing to impose harsher sentences on women. Two women received the death sentence during the 1888-97 period (although this was later commuted to penal servitude for life), while only one male received life imprisonment - probably in the absence of any male convictions for murder in this period. However, the nature of the women's offence needs examination, for despite the apparent leniency usually accorded infanticide cases (refer Chapter 4), this particular case involved a mother and daughter uniting to dispose of the baby in a somewhat gruesome manner, and undoubtedly these factors contributed to the harsh censure they received.

It is worth considering briefly two "new" sentencing categories operational during the 1888-97 Supreme Court period but not during the earlier period. On occasion it was possible for an offender to have criminal guilt attributed to him or herself, but to be bound over to come up for sentence only if called upon, which, as long as they were law-abiding thereafter, was in effect a discharge. Such a sentence was given to 2.9% of convicted males compared with 4.5% of females, possibly still reflecting a slight degree of leniency towards female offenders. (However, the small absolute numbers of females in this category may render such differences insignificant.) The other category, and one already mentioned, was that of probation, which historically became a

sentencing option following the passing of the 1886 Probation Act. A total of 8.7% of convicted males were placed on probation compared with 13.6% of females, and nearly two-thirds of the males (63%) received probationary periods of 12 months or longer compared with only one-third of the females (33%). Thus proportionately more women were placed on probation but for substantially shorter periods - this could be taken to indicate a tendency still to prefer not to imprison women unless absolutely necessary, so that any alternative offered will be applied more eagerly to females than males.

Overall it seems valid to note significant differences still apparent in the comparative treatment of men and women by the Canterbury Supreme Court in the nineteenth century, although the discrepancies appeared to be narrowing as the century drew to a close. The general move towards less severe sentencing seems to have caused much more obvious effects in the courts' dealing with males, and it was suggested that this could be due to such a trend being countered for women by a decreasing leniency in judicial attitudes towards females. Yet despite signs of equalising trends in sentencing, the movement towards such "equality" was only comparatively gradual, and evidence could be found suggesting there still to be a general reluctance to imprison women. Thus in actual punitive terms women seemed to fare rather better than their male counterparts when it came to the sentences passed upon them by the Canterbury Supreme Court in the nineteenth century.

Magistrates Court, 1888-97

The trends in the Magistrates Court present an interesting contrast with the conclusions drawn from the analysis of Supreme Court sentencing

patterns. Table 8 below may be useful in indicating the overall sentencing pattern for both sexes in this period.

TABLE 8
MAGISTRATES COURT SENTENCING PATTERN

	MALES		FEMALES	
Fined	1,006	55.8%	115	29.7%
Imprisoned	435	24.1%	216	55.8%
Convicted and Discharged	72	4.0%	27	7.0%
Placed on Probation	7	0.4%	5	1.3%
Ordered by pay Welfare	147	8.2%	2	0.5%
Prohibition Order	41	2.3%	3	0.8%
Sent to Industrial School	40	2.2%	15	3.9%
Other	54	3.0%	4	1.0%

From Table 8 we can see that exactly the same proportion of women were imprisoned as men were fined - in each case 55.8%. Thus the majority of women convicted by the Magistrates Court were placed behind bars, while the majority of males had their wallets affected but not their freedom. This may have been affected to some extent by the higher proportion of males convicted for by-law infringements which characteristically result in orders to pay fines, and with imprisonment not being an option but enforced only on non-payment of the fine. Probably what is more significant in considering the reasons for the disparity would be an examination of the relative number of cases for each sex in which optional penalties were involved. This refers to those occasions when the sentencing Magistrates gave convicted offenders the option of either paying a fine or serving time in prison, with this offer usually being made in situations

where minor offences were involved, and most typically on drunkenness charges. The options were presented generally as fines of 5/- or 24 hours' imprisonment with hard labour, with this being the most common category although variations included fines of 10/- or 48 hours' imprisonment with hard labour, or even on occasion up to £3 fine or seven days' hard labour. Such options were presented to 569 (or 31.6%) of the cases involving convicted males, and to 181 (or 46.8%) of cases involving convicted females. The higher proportion of females may reflect a tendency to prefer if possible not to imprison women, but may also reflect their proportional over-representation in the drunkenness charges for which these options were typically presented.

Of those given such an option, only 36% of males went to gaol and 64% paid the fine, while in contrast 60% of the women were imprisoned and 40% paid the fine. Possibly some women offenders may have been more receptive to the idea of a couple of nights ~~behind bars~~ - this would be a plausible explanation in the case of those with no fixed place of abode, or those feeling trapped in cruel or unpleasant residential situations. However, it may also have been the case that women were in effect often being presented with no real option at all in that they may have been far less likely than their male counterparts to have the financial resources available with which to pay fines. Robyn Anderson's material on nineteenth century Auckland indicates the difficulties faced by women in trying to pay their fines (Anderson, 1981, pp.82-83). In 1878 William Rolleston (former Superintendent of Canterbury) drew attention to the fact that at least 90% of the women imprisoned in Canterbury were prostitutes whose lack of means forced them out of gaol and back on to the streets -

The first thing now when a woman goes out is
that a few shillings are given to her, and
she must get drunk and ply her trade ...

(AJHR, 1878, Vol.2, I-4, p.48)

Such economic constraints undoubtedly affected the ability such women had to pay the penalties so frequently conferred on them.

However, it is debatable as to whether the above can entirely account for the sex disparity in offenders fined or imprisoned, and there may be at least an element of sexist justice involved here in the form of a slight trend towards women in the Magistrates Court being characteristically dealt with more severely than their male counterparts. This is supported to some extent by a consideration of the number of nominal sentences bestowed (classed here as constituting any fine under £1 in value or any term of imprisonment of 48 hours and under). Approximately 60% of males received such sentences compared with only 50% of women, and this may in part be explicable by the higher proportion of males convicted for by-law infringements, although one would expect this factor to be cancelled out to some extent by the higher proportion of females charged with public order offences. However, it is the latter which may also hold part of the answer for what seems to be a slight trend towards fewer nominal sentences being accorded to convicted women, for the "harshness" in attitude may have been directed not at all women appearing before the Magistrates Court but primarily towards those known to be prostitutes, vagrants, or habitual drunkards - in other words, those seen as violating most acutely the Victorian ideal of respectability, sobriety and gentle femininity.

These women constituted a reasonably small group numerically but made frequent reappearances in Canterbury's courts and gaols. For example, Daisy Cornfoot, a 44 year old Scottish prostitute, was released from Lyttelton Gaol in July, 1875 after serving a three months sentence

for vagrancy, was imprisoned for 96 hours in September on a drunk and disorderly charge, and the following month sentenced to a month's imprisonment in default of payment of the £5 fine she received for committing an indecent act in the park with James Dooley (Police Gazettes, Vol. XIV, Nos. 14, 18, 19, 1875).

The lifestyles of women similar to Daisy are examined in detail later in the thesis - for now it suffices to indicate in more general terms the level of concern expressed throughout the nineteenth century over the high recidivism rate of women prisoners. In the 1868 Royal Commission on Prisons it was stated that

The punishments inflicted and the treatment in the gaols seem to have even less effect upon the women than on the men, and the same women are constantly returning to the gaol after discharge.

(AJHR, 1868, A-12, p.15)

Ten years later, as part of the "evidence" offered to refute calls for prisoner classification, a Visiting Justice declared of the women:

I think, as a rule, they are so bad that they cannot be made worse ... female prisoners are generally of an age - say, between thirty and sixty - which gives no hope of their being reformed.

(AJHR, 1878, Vol.2, I-4, pp.35-36)

Similarly, in the 1893 Prisons Report, it was maintained

That the reformation of persons who have been twice or oftener convicted, especially females, is quite hopeless, and in their cases the only alternative appears to be to make the sentences as rigorous as possible, and not to relax the regulations in their favour under any circumstances.

(AJHR, 1894, Vol.3, H-10, p.2)

Consideration of male and female recidivism rates in the years 1881-1898 as shown in Table 9, indicates that on average approximately 75% of all female prisoners were recidivists, compared with only 43% of the men.

Moreover, 61.5% of the female prisoners were three-time recidivists compared with only 22.6% of their male counterparts - hence the female rate is approximately triple that for males. That women had a higher recidivism rate than men is, therefore, explicable mostly in terms of the small number of female offenders who were repeatedly arrested on prostitution, drunkenness, or other public order charges, and often given harsher sentences following each conviction.

TABLE 9
COMPARISON OF MALE AND FEMALE RECIDIVISM RATES

	% MALE PRISONERS		% FEMALE PRISONERS	
	Recidivists	Three-time Recidivists	Recidivists	Three-time Recidivists
1881	33.1	15.9	61.6	49.1
1882	35.3	18.6	58.9	46.5
1883	37.8	19.4	77.2	62.1
1884	35.5	17.2	74.8	60.1
1885	35.3	17.8	72.0	59.9
1886	37.6	19.4	73.8	57.1
1887	39.4	19.8	72.6	57.4
1888	42.0	23.2	68.3	53.6
1889	42.5	23.2	74.6	55.6
1890	42.5	23.2	80.9	68.4
1891	44.4	25.2	80.6	65.4
1892	46.2	26.0	83.1	70.9
1893	46.4	26.3	78.8	67.7
1894	47.8	27.8	75.5	63.1
1895	43.8	25.8	77.9	65.9
1896	45.9	26.2	80.4	69.9
1897	38.3	23.8	79.5	69.2
1898	46.8	27.8	76.8	65.2
<hr/>				
Yearly Average				
1881 - 1898	43.0	22.6	74.9	61.5

Source: Department of Justice Reports (AJHR, 1882-1899)

CONCLUSION

The overall impression gained from the records at first indicates that there is a certain degree of ambivalence surrounding the female offender. Sometimes she is perceived as lacking in criminal intent and responsibility, as having somehow inadvertently ended up in a courtroom where she does not belong and from which she should be ushered as quickly and quietly as possible. At other times she is viewed as totally reprehensible, even despicable, and hence the heavy arm of the law comes thundering down in an attempt to beat and break her into submission to the ideals she has so blatantly violated. However, although on occasion the same woman may be both pitied and condemned, usually the "ambivalence" can be shown to rationally reflect Victorian logic in the way these perceptions were applied to different women.

On a superficial level one can begin by arguing that respectable women were more likely to be viewed as not accountable for their crimes, with a presumption operating that their appearance in court must stem from reasons beyond their control. Typically either terrible circumstances or terrible men could be blamed for leading such women astray, and hence they would be treated as 'more sinned against than sinning'. Effectively such a view leads to the conclusion that some women appearing in court should be regarded less as offenders than as victims, and it is distinctly reminiscent of the "poor pitiful pearl" stereotype presented in the literature review in Chapter 2. At the opposite end of the spectrum stand the not-so-respectable women, those viewed as degenerate, depraved and incorrigible, who should in no sense be seen as victims but rather as the "colossal petticoated atrocities" who corrupt the men and

children in their care. These were the women to whom the courts would show little leniency and whom on occasion they would treat with more severity than their male counterparts, for the double standards of morality dictated that drunkenness and vagrancy be deemed more abhorrent in women than in men.

These two broad responses to female offenders can obviously be linked to the victimisation and sexualisation stereotypes cited earlier, and will each be explored in detail in the next two chapters. At the moment, though, it is necessary to at least hint that by no means are the dual stereotypes as clearcut as the above would tend to indicate - one cannot simply say that women appearing in the Supreme Court were treated with comparative leniency and women in the Magistrates Court with severity; or that respectable women were always seen as lacking criminal responsibility in contrast to their not-so-respectable sisters. In other words, even though trends can be noted and certain patterns seem to be emerging, these do not convey the whole story and at this stage it needs to be stressed that they should not be taken as such when so much of the saga still remains!

CHAPTER 4

COMPELLED TO CRIME: THE "VICTIMISATION" OF THE FEMALE OFFENDER

"A rather pathetic creature, a victim of circumstances, exploitation, and her own poor judgement".

(Elliott, quoted in Wilson and Rigsby, 1975).

The relationship between women and crime in criminology has characteristically been expressed in terms of women as victims of crime, not as actual offenders, for dominant ideologies of the nature of womanhood can more comfortably incorporate the notion of powerless, victimised females than of resolute and aggressive female criminals. Consistent with this ideology, as noted earlier in the literature review, has been a readiness at times to conceptualise even female offenders as victims who are 'more sinned against than sinning'. Such a conceptualisation derives from a stereotype of women as weak, passive, submissive creatures, who are either coerced or buffeted through life rather than having the intelligence, will-power and strength to be self-determining individuals.

In its consideration of the victimisation of women in nineteenth century Canterbury this chapter will not be concerned with the female victims of male rapes, assaults, and so forth, but with the ways in which the treatment of women apprehended for crimes reflected adherence to a stereotype of them as victims, or "poor pitiful creatures" (Wilson and Rigsby, 1975). The intention is to document this view within the context of a critical examination of the assumptions underlying the stereotype of women as victims.

To offer a critique of the application of the "poor pitiful pearl" stereotype in the nineteenth century courtroom is not to deny the extent to which women had to struggle against such harsh realities as poverty, desertion, illness, and domestic violence. Nor does such a critique depend on ignoring the oppressive structures which impinged particularly on women during this period, or on under-estimating the extent to which they were confined and constrained by a rigidly prescriptive sex role. For part of the intention in this chapter is to distinguish some of the forms which the legal denial of female autonomy took, while questioning the assumptions around which such denials were often based.

One aspect of this involves recognising the tendency in the Victorian era to extrapolate from observations of feminine physical frailty to proclamations of feminine mental frailty and feeble-mindedness. It also involves realising the extent to which a form of biological determinist thought operated at that time which attributed gender differences to innate causes rather than considering any social factors which might have contributed to these. Thus women were perceived as physically weak and constitutionally inferior to men, and on that basis assumed also to be mentally incompetent. Moreover, the assumption of an inherent, biological basis to such "weakness" was never questioned - in other words, never for a moment was it considered that the prescriptions and proscriptions of the female sex role might contribute to their delicacy. For this was the society which idealised the conception of women as ornaments, denying them exercise and corseting them into hour-glass shapes, only to attribute their fainting from excessive constriction of the abdomen to "innate" biological inferiority!

To appreciate more fully the lives of women in nineteenth century Canterbury, therefore, it is necessary to be aware of the prevalent ideologies and images of womanhood which restricted women in that society as well as to comprehend the social realities which often impinged on and constrained their lives. Hence, what needs to be kept distinct is the ideologically based view that women are helpless victims unable to think or determine their own lives, as opposed to the more sociological perception of women which recognises their "inferiority" to be both socially induced and structurally produced. In other words, the distinction must be drawn between perceiving women as "naturally" inferior as a result of biological weakness, and viewing them as socially inferior as a consequence of structural oppression. To relate this distinction back to the female offender is to be confronted by - on the one hand - the stereotypical image of her as the helpless victim propelled into crime, while - on the other - to recognise the influence which social and economic vulnerability may have had in rendering the choice of a criminal career to be at least a reasonable, and possibly also an attractive, option in a social world characterised by massive constraints and few alternatives.

The conception of women as still being primarily "victims", even when they are offenders, is evident in the major ways in which the ideology of feminine frailty has been translated into a view of women which states, either implicitly or explicitly, that they are not able to be held fully accountable for their crimes. Just as children and lunatics cannot be viewed as responsible for their actions, so too allowances must be made for women when it comes to assessing the level of criminal intent of which they are capable. As noted earlier, this view has been manifest in three major perceptions, with women being defined as not accountable for their crimes either because

- 1) they "belong" to men who are responsible for them, and to whom they live in submission;
- or 2) their frailty as females renders them vulnerable to the influences of either bad men or bad circumstances;
- or 3) they are perceived as pathological and their crimes attributed to some form of mania or mental imbalance.

That each of these perceptions was applied at times to women charged with crimes in nineteenth century Canterbury will now be examined through reference to particular cases from the period.

1. SUSPENDED IN MARRIAGE

The most obvious and legally enshrined way in which women were treated as not accountable for their crimes was through the common law presumption of coverture. Handed down from English law, this presumption stated that

The very being or legal existence of the wife is suspended during marriage, or at least is incorporated or consolidated into that of her husband; under whose wing, protection and care she performs everything.

(Blackstone, quoted in Scutt, 1981, p. 2)

Such thinking effectively deprived women of any legal grounds for owning property, earnings, or even the children they bore, in their own right -

Even before marriage, when a woman became engaged she could not dispose of any of her possessions without her fiance's approval. On marriage her legal existence was suspended and became incorporated into that of her husband. She was in the legal phrase, a feme covert - 'my wife and I are one, and I am he'.

(Crow, 1971, p. 147).

She was, in fact, civilly dead. All that the wife possessed at marriage became his, and everything she was to acquire later, whether through gifts,

inheritance, or even through her own earnings, was to go to her husband (Sutch, 1973, p.85). A wife was to follow her husband in everything, and her submission to him rendered it unnecessary for her to be able to sign contracts, make wills, or cast votes on her own behalf, for all that she owned, volition and desires included, had been surrendered on marriage. Although such a view was increasingly challenged towards the end of the nineteenth century,¹ and changes were slowly made in law, nevertheless

Even as late as 1872 English judges were saying:
"A married woman is not a person in the eyes of
the law".

(Reiss, quoted in Sutch, 1973,
p. 85).

In terms of criminal responsibility, the fact that husband and wife were seen as one, and the one was the husband, gave rise to the view that a wife committing a crime in the presence of her husband was presumed to have acted under his coercion - a presumption not removed from New Zealand's statute books until 1893.² (Scutt, 1981, p. 2; Sutch, 1973, p. 85). There was no need for any evidence of coercion or even persuasion to be produced - the husband's presence alone was a sufficient legal defence for her so long as there was no evidence to suggest the contrary on his behalf. Thus the wife would be acquitted as long as there was no evidence to show that she had been "acting voluntarily" in her husband's presence - in effect, it may have been just as much her lack of submission to her husband that would have rendered her guilty and punishable as the nature of the offence committed. For underlying this presumption was the two-fold

1 For a discussion of the changes gradually introduced through the Married Women's Property Protection Acts, see Eldred-Grigg, 1980, pp. 84-85; Sutch, 1973, pp. 86-89.

2 One of the declarations made at the American women's rights convention at Seneca Falls in 1848 concerning the tyranny of men over women stated that:

He has made her, morally, an irresponsible being,
as she can commit many crimes with impunity,
provided they be done in the presence of her husband.

(Quoted in Nicholas et al., 1979, p. xv).

maxim that husbands were expected to control their wives and to refrain from even attempting to act independently of them. This ideology was further borne out by the proviso that if a wife killed her husband then

she was guilty not only of murder but of
'Petty Treason' because she had acted against
her 'Sovereign' master.

(Sutch, 1973, p. 85)

A number of cases coming before the courts in Canterbury during the second half of the nineteenth century illustrate the application of this legal presumption. Hopefully, in examining some of these it will become obvious the extent to which women were viewed as surrendering their "rights" to independent decision-making on marriage, and also the pervasiveness of a more general ethos which considered all women to lack those qualities deemed necessary for self-determination.

In Christchurch in 1872 Betsy Forman threw scalding water in the face of a man who had come to collect a debt from her husband, James Forman, who was also in the room at the time; thus when the case came up in court

The Bench said there was no doubt an assault
had been committed, and defendant was
responsible for acts committed by his wife
in his presence.

(LT, March 1st, 1872).

Accordingly James Forman was convicted and fined for the offence, providing a clear example of a situation where all criminal responsibility was removed from the wife solely on the basis of her husband being present at the commission of the offence.

More often, however, the presumption seems to have been evident in cases where initially both husband and wife were charged with an offence, but only the husband would in fact be convicted. Thus when Robert and Hannah McKenzie set upon a man in Windmill Road, both abusing and

assaulting him and tearing out his whiskers, the Bench dismissed the case against the female defendant and only convicted and fined the male. Cases involving assault were, it seems, often disposed of in such a manner, with it being assumed that the husband was responsible for any injuries sustained, even in the face of what would appear to have been incriminating evidence against the wife.

In 1859 Matilda Skinner was charged that she

did feloniously aid and assist her husband John Skinner to break and enter into the dwelling house of Henry Wilson and then and there in the said dwelling house aid and assist her husband the said John Skinner in violently assaulting the said Henry Wilson.

(Canterbury Supreme Court Records, 1859, Criminal Case Files 30 and 31).

The recorded evidence suggested that Matilda was very much involved in inflicting bruises and scratches on the victim, and that it was in fact she, and not her husband, who returned to Wilson's house the next day to mock and jeer and threaten him with a broom handle. Yet the Court found only John Skinner guilty and fined him forty shillings, while the case against Matilda was dropped and she was discharged without conviction (*ibid.*, Files 30 and 31).

The presumption was also evident in non-assault cases. When Joseph and Margaret Catchpole were charged with setting fire to the hotel at Burnham, the jury threw out the Bill against the wife and tried only the husband (LT, July 6th, 1876). Similarly, when Alfred and Alice Payne were accused of breaking and entering a store in 1887, the evidence seemed to indicate that Alice later pawned the goods - this being a common venture that the two engaged in together. However, the Judge directed the jury to acquit the wife but sentenced Alfred to four years penal servitude (LT, January 5th, 1887).

Even in situations where a wife admitted her guilt on oath to the charge laid against her, she could still be acquitted of the offence. Such was the case in 1876 when John and Jane Beattie attempted to travel on the Great Southern Line without paying. Both defendants confessed their guilt, yet the Lyttelton Times reports that

His Worship dismissed the case as against the female defendant, and fined the male defendant 60s.

(LT, January 30th, 1877).

Cases also exist where although the evidence pointed towards both husband and wife being guilty, the husband would plead on behalf of his wife that her participation in the crime stemmed directly from her obeying his orders. Hence in 1869 William and Annie Jones were jointly charged with housebreaking and larceny, but when William pleaded to the Judge that his wife had only been involved through his direction, she was discharged. He, in turn, as well as demonstrating his control over his wife, was given a good character reference from the Very Reverend the Dean of Christchurch, and was given the relatively lenient sentence of six months imprisonment with hard labour (LT, June 8th, 1869).

The Criminal Code Act, 1893, abolished many old common law rules in New Zealand, including the presumption of the husband's legal responsibility for his wife's actions³ (Robson, 1967, p. 365; Sutch, 1973, p. 85). Nevertheless, despite the legal removal of the presumption, married women were clearly still not perceived or treated as entirely self-governing or responsible before the law. A letter to the Lyttelton Times in July, 1897, still refers to the category of "infants, idiots, lunatics and married women", and urges that it be recognised that

3 In conspiracy charges, however, the husband and wife were still treated as one person and could not be seen to conspire with each other, and this was not abrogated until the Crimes Act, 1961 (Robson, 1967, p.365).

there is no reason why the law should release a married woman from all 'coverture' by making her legally answerable for her own debts and her own slanders, and generally raising her to the status of a free, responsible agent.

(LT, July 31st, 1897).

A libel case heard in the Supreme Court later that year was to provoke further discussion over the continued application of the presumption of coverture. A married woman had vilely slandered in writing an unmarried woman, who in turn took the woman and her husband to court for £500 damages. It was accepted in court that it would be the husband's responsibility to pay whatever amount was fixed. In its editorial of August 24th, the Lyttelton Times reported that

Mr Justice Denniston, in giving judgment for £25 damages and costs, intimated that had the penalty fallen upon the real offender he would have made it much heavier...It is a barren consolation to the plaintiff to reflect that she might have got a verdict for a sum so substantial as to mark the enormity of the injury done her but for the fact that an archaic and irrational law throws a protective shield over the married female slanderer.

(LT, August 24th, 1897).

The editorial concluded that

It is not good for women to be kept in a state of perpetual tutelage,

while a letter submitted later to the newspaper declared that

The case reveals plainly enough that the theory of coverture still holds good, and that in the eye of the law a married woman is still a possession of her husband, and that this same coverture acts unjustly upon the husband.

(LT, September 2nd, 1897)

However, some evidence can be found to indicate that the legal presumption was generally being applied less often by the end of the nineteenth century. When John and Amelia Cook were both charged in 1897 with assault on a constable causing grievous bodily harm, both parties were

referred for Supreme Court trial, tried, and found guilty and sentenced to six months imprisonment with hard labour (LT, November 15th and 16th, 1897). Similarly, when Annie and John Dudfield's domestic dispute erupted on to the street at 3.00am one morning, both parties were convicted of using filthy and obscene language and sentenced to a month's imprisonment (LT, October 21st, 1895).

However, this latter case raises the question of the extent to which the application of the presumption of coverture may have been mediated by considerations as to the actual nature of the offence committed, with the presumption of coverture being least evident in cases involving public violations of acceptable morality. What may have over-ridden the presumption in these cases was the fact that prostitution and related offences were regarded in a different light from most other crimes. As will be discussed in more detail in the following chapter, the stereotype of the sexualised female offender was often applied in such cases, and with it connotations of a depravity too great to accommodate any notions of women as obedient, submissive wives. Thus the legal presumption excluding wives from conviction seemed superfluous in these predominantly "female" offences, and since it was obvious that the wife had behaved "improperly", there was little reason to assume a "proper" master/servant marriage relationship between the wedded partners.

Accordingly, even as early as 1864, when Stephen and Margaret Bowen were charged with keeping a disorderly house in Chester Street, both parties were convicted of the offence with no question of coverture being mentioned (although it may have been evident in the relative sentencing of each for Margaret was imprisoned for six months and Stephen for twelve). Of the nature of the offence itself, His Honour declared with some passion

that the crime of which they had been found guilty was so disgusting, so mean and execrable, that he would not trust himself to characterize it further.

(Canterbury Standard, December 2nd, 1864).

If any doubts were entertained about convicting a married woman on a joint charge with her husband, these seem to have been quickly dashed by the female defendant's response to the sentence passed, for

She was removed from the Court uttering the foulest and most abusive language against judge and jury, thus testifying to the justice of the verdict and almost calling for an increase of punishment.

(ibid.)

By 1870, however, husbands and wives charged with brothel-keeping were both likely to find themselves convicted, and to have equally severe sentences passed upon them. Thus Isaac and Mary Mitchell were each sentenced to six months imprisonment with hard labour for keeping a disorderly house (LT, February 25th, 1870) and in 1883 John and Bessie Bryant each received three months imprisonment when quarrels and disturbances at their lolly and herbal beer shop in Madras Street revealed the latter to be a front for a house of ill-fame (LT, January 5th, 1883).

It is interesting to note that the only exception to this trend of holding couples jointly responsible for brothel-keeping arose in 1871 when Sarah and Matthew Longdon were charged with drunkenness and with keeping a disorderly house. Evidence was produced to show that the male defendant had previously been cautioned about keeping a brothel, as well as about assaulting his wife, and his reluctance to work other than to occasionally "hawk" a basket was demonstrated. Converse evidence was presented to suggest that his wife was an industrious woman detrimentally affected by her husband's influence, and whose requests for him to close

down the brothel had been repeatedly met with threats and physical assaults. The Magistrate sentenced the husband to six months imprisonment while the wife was dismissed with a caution to refrain from drink and to "take care not to allow her house to be frequented by bad characters again" (LT, November 21st, 1871).

In this instance the evidence very clearly indicated that the female defendant lived in physically enforced submission to her husband, and it was only on this basis of rule by violence, it seems, that the presumption of coverture could be applied to cases involving couples jointly charged with brothel-keeping.

In some cases the legal presumption appears to have been extended such that men in general could be held accountable for the crimes committed by any woman in their presence - or if not totally accountable, then at least more so! In some situations men and women charged with joint participation in an offence were both convicted, but often received different sentences. In 1893 Charles Hanley picked up a prostitute by the name of Mary McMahon and went to her home, where he was later assaulted by her, Minnie Bench, and Bernard Brown while Frederick Porter robbed him. Brown had actually refrained from further attacking Hanley when blood appeared, and had even obtained water to bathe the wound in the face of taunts and continued beating of the victim by the others. His Honour found Porter guilty of robbery and sentenced him to two years imprisonment, while the other three defendants were charged with assault. Brown received six months imprisonment and the two women three months each - despite the fact that it was he, and not they, who had showed compassion and attempted to halt the attack (LT, May 31st, 1893).

At other times the evidence would not even be presented against the female defendant, and again this seemed to occur more often in cases involving violence. Hence in 1861 James Evans and Ann Taylor were jointly charged with assault, but the bill against the female prisoner was ignored, and she was discharged while he was imprisoned for twelve months with hard labour (Canterbury Supreme Court Records, 1861, Files 85 and 86).

Again, however, this tendency was modified by the nature of the offence committed. When Mary Haynes and James McGilvray were convicted of committing an indecent act together within view of a public place, each was sentenced to three months imprisonment with hard labour (LT, July 7th, 1897). Moreover, cases involving women already known to the police characteristically resulted in their being sentenced just as harshly, if not more so, than their male counterparts. Thus when Mary Holmes, "a prostitute and an old offender", was convicted along with Peter Cook and James Connor of being illegally on the premises of a private garden at 1.00am, she and Cook were each sentenced to two months imprisonment, while Connor, who had not been before the Court previously, was remanded for medical treatment of his drunken condition and later dismissed (LT, January 1st, 1877). And in 1881 when Margaret Guerin and Robert White were found sleeping in a tent and charged with vagrancy, she was labelled "incorrigible" by the Bench and sentenced to twelve months imprisonment with hard labour while he was convicted but discharged without sentence (LT, March 5th, 1881).

It should by now be apparent that the application of the legal presumption was not always as clear-cut as it may have initially appeared. Certainly there was a distinct tendency for husbands to be held responsible for offences committed by wives in their presence, and for joint charges to result in husbands being seen as more accountable, and hence more punishable, than their wives. In situations where non-married males and females were charged with participation in the same offence, the male defendants

were often perceived as more responsible for the crime committed than the females. However, all of these situations were mediated to some extent by factors such as the nature of the offence and the extent to which the offender was already known to the police. Males were generally more likely to be held accountable for offences involving violence (probably because it was difficult for the Victorian ideology of fair and gentle womanhood to easily accommodate an intentionally violent woman), while cases involving prostitution or vagrancy were more likely to incur equally harsh sentences for male and female participants alike. At times, the women involved in such offences even received harsher penalties than the men, reflecting the double standard of morality operating which censured sexual expression in females much more heavily than in males, a point which will become more obvious in the next chapter.

Having examined one of the perceptions according to which women were seen as lacking in criminal accountability, we will now consider a second - namely, that which tended to attribute the criminality of women to female vulnerability to bad company and bad circumstances.

2) FEEBLE, FRAIL AND FORCED

The ideology of womanhood in the nineteenth century stressed the weakness and frailty of the gentle sex, their passivity and vulnerability. Women needed men to protect them - hence the presumption of coverture. Unless they were structurally located in a position of subservience to a male (either their father in their youth or their husband on marriage), then women, it was believed, ran the risk of falling prey to temptation, climaxing in degradation and despair. Such an ideology served to legitimate male control over women, and provided a means whereby female involvement in crime could be blamed on the husband or on other persons or circumstances which might have compelled a woman to resort to desperate actions.

The early criminologist Hargrave Adam's view that "wrongdoing in the female was an outcome of malevolent male influence" (Adam, 1914, p.3), seems to have been evident in some of the cases involving women in nineteenth century Canterbury. For example, the case involving Sarah Longdon, already mentioned, provoked testimony to be offered in court as to the industrious nature of the woman and her previous good character. However, Inspector Pender pointed out that she "was rapidly going to the bad through the conduct of her husband" (LT, November 21st, 1871).

Men were frequently blamed for enticing young girls into prostitution, with popular conceptions of the prostitute sometimes pitying her as a frail creature seduced and "ruined" by an evil male who had then abandoned her (Pearsall, 1976, p. 4). The poor woman turned to prostitution as a last resort, and it was believed by some that just as a malevolent male had ruined her so a well-motivated male reformer could save her from a life of sin and misery. Samuel Bracebridge's accounts faithfully reproduced the

classic prostitutes 'confession' which embraced such heart-rending elements as parsonage childhoods - a particular favourite - ravishments by callous swains, merciless expulsions from parental hearths, and fatherless infants...The poor girl tricked, trapped, and seduced by the wealthy villain - he of the untrustworthy top hat and flourishing mustachios - was a staple figure of Victorian melodrama.

(Harrison, 1977, p. 239).

Stereotypes of male lust and female sexual passivity inevitably contributed to the suasion held by the seduction argument in some circles -

She falls! And for man's mere passing
pleasure is irretrievably ruined!

(British and Foreign Medical Chirurgical
Review, 1858, quoted Sigsworth and
Wyke, 1972, p. 84).

In colonial Canterbury concern was expressed at times that such corruption often began before the women even reached New Zealand. At a public meeting on "The Social Evil" held in the Christchurch Town Hall in 1867, the Rev. Charles Fraser urged those assembled not to assume

that all young women who had come out and gone astray here had been of bad character originally ... [for] there were only too many dangers to which immigrants were exposed for three months or more on the passage to the colony and [which] had led to a great deal of the contamination that had displayed itself here. Temptations of a very serious kind arose on board...

(LT, November 22nd, 1867).

At the same meeting the Resident Magistrate, C.C. Bowen, spoke favourably of a rescue home's efforts in saving girls from their "downward course" and emphasised that "A great many of them were 'more sinned against than sinning'" (ibid.).

The correspondence provoked by this meeting included a letter to the editor of the Lyttelton Times condemning employers who turned unsuitable servant girls out on to the streets, and also castigating

the painted butterfly on the surface of society - the vile seducer. If the law, as it is at present framed, allows this man's escape, let us remedy it, and see that penalties of no ordinary character await him who systematically spins a web to entrap the unwary girl, and then abandons her to her fate.

(LT, November 28th, 1867).

Thirty years later the same attitude was expressed in a letter from a gentleman signing himself 'A Father of Sons and Daughters', suggesting of good girls gone bad that we "hang the old libertines (often married men) who led them astray" (LT, April 22nd, 1896).

Thus, despite the scorn and contempt so often heaped upon their heads, at least some prostitutes in the nineteenth century were seen as "soiled doves" whose soiling had been at the hands of men, and this attitude is also reflected in the language used to refer to them - those "poor fallen creatures" - "the unfortunates".

"Malevolent male influence" could also be felt more indirectly in women's lives, for it was often either seduction or desertion by men which placed women in circumstances seen as criminogenic. Reports of males seducing females were commonplace, the women often being forced to petition through the courts for support. Emma Bright worked for Sydney Griffiths as his housekeeper for some time, and when he asked her to marry him she agreed, whereupon he seduced and impregnated her, but barely two weeks before the child was born he ordered her out of the house and denied all knowledge of the charge laid against him. Fortunately for Emma the case was proved in her favour and she was awarded £5 expenses and 7s. per week maintenance (LT, November 16th, 1887), but was still left to survive in a society antagonistic to unwed mothers.

Other women fared rather worse, especially during the earlier years of the settlement's establishment which saw the founding of the Christchurch House of Refuge in 1864 as one of the few available sources of assistance for unmarried mothers. Since its principal efforts were directed towards "arresting the downward progress of the young beginner in sin" (LT, February 16th, 1867), the Refuge adopted an intentionally strict regime so as to deter any totally depraved women who might simply want to use it as a convenient shelter. As a consequence, inmates were put to work for long hours to defray in part the expenses of maintaining their children, while the infants themselves were put out to nurse with respectable women, except for half a day on Sunday when mothers and children were united so as to



Plate 2: The Female Refuge (Source: Canterbury Museum)

Homes for the "fallen women" of Christchurch included, in the 1860s the Female Refuge in Cashel Street (pictured above) and the Christchurch Female Home in Peterborough Street during the 1870s (below).



Plate 3: The Christchurch Female Home (Source: Canterbury Museum)

maintain their affection for their offspring (ibid.). That these women were often seen as unfortunate wretches is reflected in the comments made by the Rev. Torlesse in the Refuge's 1866 Report:

These, generally speaking, have been the victims of designing men, and more sinned against than sinning, for whilst the dishonourable father of an illegitimate child too often declines to render any assistance whatever to the girl whom he has deceived by his false promises, and whilst his guilt remains unknown to the world at large, his victim is left to bear not only the well-dressed reproach with which society visits a woman's fall, but also the burden of maintaining her child.

(LT, February 16th, 1867).

The stigma attached to illegitimate births was well recognised, as was the belief that unaided and unguided, many girls left in such circumstances could be forced into lives of even greater debauchery. Hence the Refuge took pride in being able to assert that as a result of its efforts "many a woman is rescued from a life which is horrible to contemplate" (ibid.).

The desertion of married women by their husbands was yet another way in which males were seen as having detrimental effects on the morality and respectability of women. In 1857 a letter from the Resident Magistrate of Lyttelton to the Provincial Secretary called for support to be provided for the two children of Catherine McDonald who had just been sentenced to a term of imprisonment. Her husband had left her and was working up-country, and action would now have to be sought to compel him to provide for the children. Meanwhile, Catherine, it seemed, had become "a person of very bad character" (ICPS, 114, 1857). Ten years later she was making repeated appearances before the courts on drunkenness and prostitution charges, while as late as 1883 reference was made to the same woman "rolling in the streets" so vigorously while drunk that she actually broke a leg (LT, October 11th, 1883).

Even if desertion was not linked with women falling prey to the bottle or the streets, it could be associated with economic destitution. In 1887 it was reported that

A poor old woman named Lucy Coster was charged with being without lawful excuse upon the premises of F. Powell, New Brighton Road. Inspector Pender stated that she had been in the habit of wandering from place to place. She was in a filthy condition, and had no friends to look after her. Her husband left her some time ago, and was living at Auckland. The Bench sent her to prison for fourteen days, so that she might be looked after, cleaned, and made comfortable. Meanwhile the police could make enquiries about her husband.

(LT, October 28th, 1887).

Destitution was seen at times to predispose some women towards property offending, and if the defendants pleaded that such actions were linked with their desire to provide for their children, then leniency might be shown by the court. Thus in 1891, when Elizabeth Pearson pleaded guilty to the larceny of 64 yards of dress material, she impressed upon the judge and jury that she had been ill for a long time and struggling to provide for her five little children. The police stated that although Elizabeth was currently serving a sentence for shoplifting, there was no reason to believe she was an habitual criminal, and accordingly she was sentenced to three months imprisonment with it being indicated that this would in fact add very little to the length of time of her previous sentence (LT, February 24th, 1891). Later that decade a 12 year-old girl was charged with begging after having sung on the streets to the accompaniment of an Italian harpist, who was himself charged with procuring her for such purposes. The incident resulted from the girl's mother being an invalid who had taken in the harpist as a boarder to help defray expenses, and whose economic destitution further necessitated the daughter being put out

to sing in an effort to raise the rent money. Application was made to the Charitable Aid Board for relief to be supplied (LT, April 23rd, 1896).

Dire economic circumstances were thus seen as contributing to various forms of female criminality, but the argument was made on occasion that such conditions could actually force women into crime. Such circumstances were not only linked with the unemployment of women, but also with their exploitation as employees. Thus a letter to the editor of the Lyttelton Times in 1897 stated very strongly that

It is not only where there is a market for a working woman's labour that she may be compelled to sell her body for that for which there is a market, but she may be obliged to have recourse to that dread alternative when there is a market for her labour, but when the market price for it is barely sufficient to keep her own body and soul together, let alone those who may be dependent on her.

(LT, July 21st, 1897)

The argument that women were compelled to offend was consistent with the image of them as weak, passive victims, more vulnerable to the effects of seduction, destitution and so on than their male counterparts. Certainly it must be recognised that the social position of women in the nineteenth century did expose them to incredible pressures and hardships. Elsewhere it has been suggested that the group most vulnerable to economic fluctuations in nineteenth century British society was single women (Pinchbeck, cited Sturma, 1978, p.4), and within the New Zealand situation this was also the case.⁴ Margaret Tennant's work on charitable aid in New Zealand indicates double the number of women as men being forced to apply

4 "Single" women being used to refer not just to the unmarried but to women also who were widowed, had been deserted etc. and were coping on their own with or without children.

for outdoor relief, with the major cause of poverty for women being identified as having "no male support" (Tennant, 1983). This factor derives entirely consistently from what we have already seen of the society's perception of women as weak, dependent creatures in need of male support and protection and dependent for their status and livelihood on the existence of such. Opportunities for women in paid employment were very limited in the nineteenth century and essentially "Women had to endure the humiliations of domestic service, or would stitch themselves blind as seamstresses" (Eldred-Grigg, 1982, p. 63). The biggest demand for female labour in colonial Canterbury came from those wealthy enough to employ servants, with approximately two-thirds of the paid female workforce during the 1870s being employed as such⁵ (ibid., p. 64). From the 1880s onwards the growth of the textile and clothing industries opened up another possibility for women workers in factory employment (Olssen, 1980, p.164). The choice for many women, however, seemed in some ways to be between sweated labour in the factory or sweated labour in the home, for neither occupation, textile worker nor domestic servant, was very appealing.

The 1880s also saw New Zealand affected by a worldwide economic depression, and the desperate need many women faced for money virtually guaranteed employers a docile workforce. Most factory work for women was in the clothing trade, and conditions for workers were often appalling.

In Christchurch trousers were being made for 4½d. per pair, and to earn enough, women had to sew day and night, with only flickering candles and lamps for light.

(Roth, 1977, p. 25).

5 However, it should be noted that compared with Britain relatively few women worked outside the home - only 20 per cent in 1874 and 24 per cent in 1891 (Dalziel, p. 118).

The lot of servants could be even worse, for while some legal protection for women factory workers existed on the statute books at least⁶ (even if it was poorly enforced), domestic servants suffered from a total absence of any serious attempts to regulate their wages, hours, or work conditions (Sutch, 1973, p. 71).

Extremely long hours of work, 'arduous and even disgusting duties', poor wages, unsolicited sexual advances, not to mention poky accommodation, constituted the lot of most servants.

(Olssen, 1980, p. 162).

In 1887 the inquest on the death of a servant in Dunedin aroused widespread interest in the South Island. One of the main factors in Margaret Macintyre's death was said to have been the effect of long neglect and want of proper food, with evidence being given that she had been forced by her employer, Mrs Reid, to work in freezing cold conditions without foot apparel (LT, May 26th, 1877). Although the employer was put on trial for manslaughter, she was acquitted despite the clamour of widespread public dissatisfaction at the verdict (LT, July 13th and July 17th, 1877). Yet conditions for servants and employer treatment of them continued to be often brutal and repressive throughout the nineteenth century. In 1897 a woman wrote to the Lyttelton Times commenting about the numbers of young girls aged 14-17 loitering round Christchurch streets at night, and pointing out that many of these were "slaveys" working for only 2/6d or 3/- a week. Often they would become pregnant or receive a criminal conviction and gravitate to the Rescue Home. In fact, the author pointed out "fully ninety per cent of the girls who pass through these Homes are domestic servants (LT, August 7th, 1897).

6 For example, the Employment of Females Act 1873, which sought to restrict the hours which could be worked by women to eight per day, but twelve years later calls were still being made urging that it be policed (Roth, 1977, p. 25; Sutch, 1973, p. 73).

Such women can, therefore, be legitimately viewed as the victims of a society particularly oppressive of its female, working class members. The harsh economic realities they suffered were further compounded by the repressive nature of the prevailing ideology of womanhood, which prescribed for women a marriage relationship characterised by submission, which if not yielded "voluntarily" could be obtained through coercion.⁷ Additionally, all women were assumed to be economically dependent on men, and the latter seen as having the right to control not only their purses⁸ but also their lives. However, should those men abdicate their financial responsibilities then it was extremely difficult for the women to petition them successfully through the courts for support. Thus in effect most women had very little security even though they were in theory the protected weaker sex. Their options for earning their own living were also severely restricted - but acknowledging the paucity of alternatives does not necessitate any glib reliance on those images of women which typically portray them as forced against their wills to "go on the streets".

The distinction must be drawn between the stereotypical concept of women as victims and a sociological analysis of women as vulnerable. For to intimate that women were compelled to become, for example, prostitutes,

7 The "right" of husbands to coerce their wives into submission was even "protected" in law by, for example, the tolerance shown to wife-beating. In 1871 three men were charged on the same day with assaulting their respective wives. Yet although considerable violence was involved - such as being kicked in the head - and despite the fact that each of the men had a history of violence towards their wives, Mr C.C. Bowen, R.M. refused to imprison any of them because, he said, he was reluctant to take them from their place of work (LT, September 8th, 1871). Five months later one of these men, William Price, was again on trial for yet another brutal attack on his wife, this time having torn nearly all the hair from her head (LT, February 14th, 1872).

8 It was not until the Married Women's Property Act, 1884, that married women were given the legal right to own property, and even then were still obliged to obtain their husbands' permission before entering any extramarital business partnership, (Eldred-Grigg, 1980, p. 85).

is to assume a weakness of character and inability to be self-determining which ultimately demeans such women to the "passive puppet" level. To adopt the alternative perspective is to affirm the social constraints women faced, and the economic vulnerability emanating from their structural location in relationships characterised by dependency and relative powerlessness. Yet it is also to recognise that within the limited options available to them, these women were making rational decisions as to how best to determine their lives. And for some, as we shall see later, prostitution seemed the option most likely to provide them with the means to support themselves and their children, as well as probably appearing a less exploitative occupation than employment as domestic servants.

Thus it is the stereotypical notion of the "poor pitiful pearl" that is being rejected here, along with the "chivalry" which often accompanied this perception of female offenders. For the women viewed as weak and helpless were often treated with comparative leniency by the courts - the likelihood of this occurring being substantially enhanced at times by the demeanour of the defendant in the dock. The sight of a woman weeping before the judge or magistrate often moved the latter to express regret at having to administer any form of punishment to such poor, distressed individuals, often it being assumed that such displays of remorse could only indicate a certain respectability of character. Thus when Annie Wilson sobbed bitterly and could say nothing in defence of the charge laid against her of concealment of birth, the judge commented on how sorely "grieved" he was to see her before him. From her background and appearance His Honour said he could only "suppose that (her) conduct hitherto had, with this one exception, been respectable" (LT, September 2nd, 1869). The sentence of two months imprisonment which Annie received was very minimal given that offences against the person could result in extremely severe penalties being imposed.

The leniency was even more pronounced in the case of "a woman of respectable appearance" named Annie Smith who had been jointly charged with being drunk and committing a theft (LT, March 26th, 1884). The "very pitiful appeal" which she made to the Bench resulted in her being convicted but discharged without sentence. Yet not-too-respectable and not-so-tearful women frequently received sentences of three months imprisonment simply for drunkenness, even when no theft charge was proved against them. Emotional outbursts in court could also serve to delay proceedings, and at times this produced a favourable outcome for the defendant. When Julia Jackson, appearing on an assault charge, "gave way to a fit of hysterical crying" which did not appear to be controllable, the Bench adjourned the case a day and then simply cautioned and discharged her (LT, April 28th, 1887).

Hence it seems that if a woman's court appearance could be linked with respectability and notions of weakness and victimisation, this was likely to result in a degree of leniency being shown her. In part such leniency was motivated by the desire to protect these women from the contaminating influence of the "utterly abandoned" (LT, September 3rd, 1869), for the same vulnerability to bad influence which had compelled them to commit a crime could also predispose them to further corruption within prison walls. Thus when Emily Ann Needham was convicted before the Supreme Court in 1869 of three charges of forgery and uttering, she was referred to as "a poor weak woman" from a highly respectable family. His Honour said he would give her "a much lighter sentence than I would give to a man under like circumstances" because he did not wish to risk her contamination by the "drunken prostitutes" confined in Lyttelton Gaol (LT, March 4th, 1869).

Thus it appears that at times the courts were inclined to perceive women as not entirely accountable for the offences they committed and to attribute criminality in women to factors external to, yet constraining, them.

The other major perception governing the non-accountability of women which remains to be considered - namely that of attributing female criminality to some form of pathology or insanity - emanates from an almost opposite emphasis in that it stresses largely internal and innate causes of criminal offending.

3) EMOTIONALLY VULNERABLE AND MENTALLY DERANGED

Ascribing the label "mentally ill" to any individual often reflects prevailing sex role stereotypes of acceptable and non-acceptable behaviour, stereotypes which essentially define males as independent and aggressive and women as submissive and passive (Al-Issa, 1980; Braverman et al. 1972). It is "male" characteristics, however, which tend to be viewed as the healthy and acceptable ones - but only so long as it is males who exhibit them!

Society and its professionals have sanctioned typical male behaviours and considered them the ideals for mental health. Because of this, women are thrown into unresolvable conflict and are damned whatever they do. Whether they show masculine or feminine behaviour, they are considered sick.

(Al-Issa, 1980, p. 29).

Or, as Hartz-Karp has expressed it, women are "Damned if they do (act feminine) and damned if they don't" (Hartz-Karp, 1981, p. 182). Women who committed crimes, especially if of a violent nature, were very obviously not acting "feminine" by Victorian standards, and the perception of women

as weak and non-self-determining could be translated at times into a tendency to attribute some form of insanity to those exhibiting this "unusual" and "aberrant" behaviour.

In the early nineteenth century psychiatry first began to have some influence on the field of law, and initially it was applied only to those crimes considered the most "unnatural" and seemingly unmotivated (Foucault, 1978). In effect, therefore "Criminal psychiatry first proclaimed itself a pathology of the monstrous" (ibid., p. 5). However, it was not until 1843 that insanity was recognised as an acceptable legal defence following the M'Naghten case,⁹ with the rules established as a consequence basically stating that

A man has a defence first, if he did not know the nature and quality of his act and second, if he did know that, but did not know that it was wrong.

(Prins, 1980, p. 18).

The application of such legal principles, however, was mediated, then as now, by considerations of sex-appropriate behaviours for men and women. Thus in the context of writing about insane women in nineteenth century New Zealand, Ellen Dwyer stresses how

the official medical journals of the day insisted that women, by virtue of their physical frailty and emotional sensitivity, were much more vulnerable than men to mental illness...In short nineteenth century medical descriptions of female insanity reflected the sex-role stereotypes of Victorian America.

(Dwyer, 1980, p. 29).

9 Daniel M'Naghten had attempted to assassinate Sir Robert Peel but, unable to recognise the British Prime Minister, had fatally shot his secretary instead (Prins, 1980, p. 17).

The nineteenth century also saw much concern expressed over the potential dangerousness of sexuality, with this anxiety being stated in a variety of ways, not the least of which was a fear that moral laxity could lead to insanity. While in the case of men such a fear was largely restricted to exposing the links between either sexual excess or masturbation and madness, women were portrayed as much more vulnerable given that "such dangers are intrinsic in their very cycle of sexual development", (Skultans, 1975, p. 4). Puberty, menstruation, pregnancy, and menopause, combined with tendencies towards cerebral excitement and general constitutional weakness - all were seen as predisposing women towards at least some form of mental derangement. It was also widely believed at the time that insanity was much more likely to be inherited through the female than the male line (Andrew Wynter, 1875, quoted *ibid.*, p. 235).

Several forms of insanity were considered much more typically, and even exclusively, feminine than others.¹⁰ Historically, hysteria has been considered a predominantly female disorder (Al-Issa, 1980, p. 151), as indicated even by its literal meaning - "The rising of the emotions of the womb" (Mitchell, 1974, p. 48). Henry Maudsley, writing in 1873 of the varieties of insanity, saw hysteria as characterised by such factors as maniacal excitement and a loss of will-power, with sufferers possibly exhibiting "an erotic tinge" in their manner of behaviour (quoted in Skultans, 1975, p. 234). A further "typically" female disorder was described as

the irritation of ovaries or uterus, which is sometimes the direct occasion of nymphomania - a disease by which the most chaste and modest woman is transformed into a raging fury of lust.

(*ibid.*).

10 John Haslam, a psychiatrist at Carrington Hospital in Auckland last century, stressed the extent to which insanity in women was associated with the "peculiarities of their sex". Particular "female problems" cited in the hospital's case records included childbirth and childlessness, menstruation and irregular menstruation, pregnancy and miscarriage, and lactation (Haines, 1983).

The role of the generative organs in producing female insanity could also take the form of "puerperal insanity" a term referring principally to the period immediately following child-birth, although extended at times to include the insanities of pregnancy and of lactation (ibid., pp. 232-233).¹¹ A variety of symptoms were identified in such cases, including "melancholia", "mental weakness", "moral perversion" and "excitability".

The perception of women as mentally precarious creatures whose hormones could suddenly tip the balance from sanity to insanity was especially manifest in the nineteenth century courtroom during the hearing of infanticide cases. This may have been a result of the Victorian tendency to refrain from openly discussing bodily and sexual matters - thus menstruation and the menopause were seldom mentioned and were easier to conceal than pregnancy and birth. Consideration of several Canterbury infanticide cases may help us to perceive the obvious reluctance felt by judges and juries to convict and punish women for infanticide, and their preference for declaring such women insane rather than be forced to admit that they had intentionally killed their offspring.

One evening in March, 1884, the bodies of two young children were plucked from the River Avon. A woman was found, dripping and excited, who said there was another little boy somewhere, and he was later found crying and hanging on to a willow tree. Ann Roil subsequently stated that she had done away with the children because she was afraid of dying and leaving them unprovided for and alone. She added that she had also tried

11 In New Zealand Puerperal mania was listed as a constant form of insanity from the late 1860s to the 1880s (Primrose, 1968, p. 201).

to drown herself. In court she was said to have been suffering "mental aberration" on that day in March, and her condition was more generally ascribed to "puerperal mania" following the birth of her last child. Deemed not guilty on grounds of insanity, she was committed to Sunnyside (LT, April 19th, 1884).

Just before Christmas in 1887, Martha Dalziel, aged 32 and described as "a widow, of respectable appearance", pleaded guilty to a charge of larceny under the influence of drink. Inspector Pender vouched for her "respectability" in Court, and she was accordingly not imprisoned but sentenced to six months probation (LT, December 20th, 1887). Approximately one week later she jumped into the Rakaia River with her four year old son fastened to her waist by a garter and drawers. The child died, whereas Martha was unconscious for some time but later recovered. Testimony was given in court that her husband ruined Martha by leading her into drink, and that she had been a sober woman until she married him (a publican). It was also mentioned that Martha had only recently been widowed. A doctor testified to her having "unstable nerve centres", while Martha's defence lawyer admitted that if she was found guilty then it would have to be of murder since clearly the evidence would not support a verdict of manslaughter. However, he went on to say

The theory that the woman was in a sound state of mind involved an idea so revolting that it was impossible to contemplate it without horror, that a fond mother, under the influence of drink, was seized with a craving for slaughter so strong that it must be gratified, even at the expense of the one nearest and dearest to her.

(LT, April 12th, 1888).

The lawyer also tried to persuade the jury to consider that the woman was lightheaded at the time after a long walk without food, and suggested that in her temporary fit of mania Martha had entered the river purely in order

to get to the other side, and without any intention of destroying either herself or her child. Now, however, she was safe and sane again, and thus he called for her complete acquittal. The jury similarly found it too "revolting" to conceive that Martha had been sane at the time she drowned her child, and they returned a verdict of not guilty on the grounds of insanity. Martha Dalziel was sentenced "to be detained in Sunnyside Asylum during the pleasure of the Colonial Secretary (Supreme Court Records, File 2090, 1888).

In 1876 Alicia Sheehan was charged with having wilfully and feloniously killed her female infant child, but claimed to have accidentally dropped the baby in a bucket of water while suffering a giddy attack. She had felt too faint to pull the child out before it drowned, just as she had felt too weak a year beforehand to save her baby son after he had "accidentally" fallen into a waterhole with her. In both cases the post mortems concluded that the infants had died from accidental suffocation, and on this occasion it was debated whether the accused may have been suffering from puerperal mania. The judge asked the jury to acquit Alicia on the grounds that she was temporarily insane at the time of the offence's commission, but after deliberation a verdict was returned of not guilty on the grounds of insanity. Since that verdict required Alicia's removal to Sunnyside, His Honour then requested that for the duration of her time there she be detained in a convalescent ward with other patients showing little indication of insanity, patently hoping for her early recovery and release (LT, October 4th, 1876).

The above cases all indicate in part an apparent reluctance to attribute criminal responsibility to infanticidal mothers. Such an attitude has not always been the case -

From the Middle Ages until well into the eighteenth century, the condemned woman was faced with a variety of death penalties, of which decapitation was considered the most merciful. Other means were burial alive, impalement, and 'sacking' (drowning), which was frequently the penalty of choice.

(Piers, 1978, pp. 68-69)

Much of the antagonism was linked to an assumption that it was out-of-wedlock babies who were being killed, and thus the mother was censured as much for her sexual immorality as for the murder of her infant. As the distinction emerged between wanton wenches and the victims of seduction, however, there came about a change in the harshly punitive attitudes which had been held, and in the eighteenth century infanticide came to be seen as a case for which the death penalty should be abolished (Mannheim, 1965, p. 696).

By the mid-nineteenth century the about-face attitudes seemed virtually complete, with all-male juries being visibly reluctant to declare mothers guilty of such a crime as infanticide. Victorian ideology did not allow for women to be violent, let alone for them to be the murderers of their children. The smooth running of patriarchal society under capitalism demanded that women embrace motherhood as a "natural" joy and vocation - not that they violate the sacredness through such blatant rejection of the pressures and hardships it often brought in its wake. Just as Queen Victoria refused to believe lesbianism even existed, and only male homosexuality was subject to legal sanction, so the conception of mothers wilfully killing their offspring was often deemed too preposterous to be true, and, as we have seen, the preferred stance was to attribute the "cause" of the crime to insanity. In cases where it was impossible to uphold such a plea - often occasioned by the defendant's actually admitting her guilt - the courts responded not with the severity one might expect would accompany the

recognition of such a heinous crime. Instead the sentences they imposed implicitly assumed that still the woman could not be held entirely accountable since there must be a male ruffian somewhere who should ultimately be held responsible.

By 1856 the situation was such that the Rev. William Scott was to declare "A conviction for infanticide is all but impossible" (quoted in Crow, 1971, p. 277), and a study of cases heard in the English courts of the day led the analyst to conclude

that juries would not convict even in the most flagrant instances - and medical evidence always tended to support the juries' bias: confinements alone in the dark might lead a young mother to cut an infant's throat in mistake for its umbilical cord; there was nothing to show whether a child had had two fingers thrust down its throat or had failed to start breathing; if a child was found drowned at the bottom of a well, there was no indisputable proof that it had been born of the young woman in question; if the child died for any of half a dozen reasons who was to say that it was murder and not inadvertence or manslaughter?

(Crow, 1971, p. 278).

It was in part the reluctance to convict women of infanticide which in England gave rise to the creation of the offence of "concealment of birth", and this was written into New Zealand's statute books in 1867 (Anderson, 1981, p. 130). The law stated that

If any woman shall be delivered of a child, every person who shall by any secret disposition of the dead body of the said child, whether such child died before, at, or after its birth, endeavour to conceal the birth thereof, shall be guilty of a misdemeanour.

(quoted in LT, September 2nd, 1869).

A less serious offence than infanticide, concealment of birth, was ostensibly introduced because of the difficulty at times in determining whether the bodies of infants disposed of in secret may or may not have been still-born (Anderson, 1981, p. 131; Philips, 1977, p. 261). This offence made that particular issue immaterial by requiring evidence only of the secret disposal of the body, regardless of how death occurred. In practice, however, it was generally assumed that

cases of concealment of birth are usually
cases of infanticide also, but included in
the milder category by the leniency of
judges and juries.

(Acton, 1857, p. 206).

The first such case heard in Canterbury by Mr Justice Gresson was in 1869, when Annie Wilson aged 21, was indicted following the discovery of the dead body of an infant child underneath the mattress on her bed (Canterbury ~~Supreme~~ Court Records, 1869, File 597). In court Annie sobbed bitterly as she pleaded guilty to the charge and could say nothing in mitigation, but His Honour expressed great reluctance at having to confine her with hardened felons in Lyttelton Gaol. However, it was a serious charge and could have led to Annie being accused of murder. To reconcile his conflict of sentiments, His Honour said he would opt for giving Annie a light sentence but nevertheless one that would hopefully serve as a warning to others. Accordingly she was sentenced to two months imprisonment with hard labour (LT, September 2nd, 1869).

In April 1887, Margaret Blyth, aged about 27, was tried for endeavouring to conceal the birth of her baby by disposing of its body. Evidence was given by a neighbour's daughter as to the infant's body having been seen burning on the fire, and an argument ensued in court when the doctor who had attended Margaret refused to give evidence and expressed fears of police entrapment. Eventually the case was thrown out of the Supreme Court

and the defendant was discharged (LT, April 26th, July 5th, 1887). Also of interest in this case was the obvious effort made by the accused to conceal her identity, for she had passed herself off as a married woman and worn a veil over her face during the court hearing, clearly living in terror of the stigma attached to her situation and her "crime".

Efforts to avoid the stigmatising label often resulted in women attempting to conceal the pregnancy as well as the birth. The most well-known incident occurred in 1912 when a young Dunedin woman named Annie Read assumed a male name and male attire to work in a city bookshop. Her absence from work one day led to her being found lying unconscious in a pool of blood in the room she rented, a newborn child at her side (Levesque, 1976, p.28). In Christchurch in 1887 the parents of Sarah Brimmicombe knew nothing of their daughter's pregnancy until the police came to the house to arrest Sarah for concealment of birth. The latter, in pleading guilty to the charge, placed the Judge in a position where some form of punishment had to be inflicted, and thus she was sentenced to six months imprisonment with hard labour. It was reported in court that in passing sentence

His Honour admonished the prisoner on the serious position she had placed herself in, and told her that it was only by God's mercy that she was not on her trial for wilful murder. Whoever might be the cause of that great evil, on that man was the greater guilt of the girl's shame, although he could not be reached by the arm of the law.

(LT, January 5th, 1881).

Thus simultaneously, the Court's ambivalence towards such women was expressed, for at the same time as Sarah was reminded of her shame and sent to prison, those present in the court were instructed to remember that somewhere, out of reach, lurked a worse offender - the male seducer.

It was just six months earlier that Jane Matthews had also been charged with both infanticide and concealment of birth. Aged about 20, she had only recently arrived in Christchurch and obtained a job as a housemaid. When labour began, Jane had gone out on to the street in search of a cab, but the extent of the pains forced her to lie down on the banks of the Avon River where, alone, she gave birth. She fainted, whereupon what happened next, said the Lyttelton Times, was "unfit for publication" (quoted in Lamb, 1981, pp. 115-116). A baby's body was later retrieved from the river - a full grown female infant which, the inquest stated, had probably been born alive. Later Detective Benjamin went to arrest Jane, and reported that as soon as he said to her "I believe you've had a baby", she began to cry, eliciting a reassuring comment from him that nothing would happen to her. His Honour protested at such police action, considering it a poor attempt to allay her fears and induce her to make a confession. A possibility still remained in law that the baby died naturally from want of sufficient air, so the infanticide charge was dropped and the jury asked to consider if "the mother had taken such action as she thought would prevent her from being known as the mother of the child". Accordingly Jane was found not guilty of murder but guilty of concealment, and His Honour remarked to her that only she knew if she was guilty of the graver crime. He obviously thought she was, making it clear that he considered "her status in this sense as very low", and adding to those present that

It was important that the young women of the Colony should be brought up with a wholesome terror of a crime such as that of infanticide.

Jane would thus be sentenced - as a warning to others - to two years imprisonment with hard labour (LT, July 7th, 1880).

This was a harsh sentence relative to the normal leniency accorded women convicted of either concealment or infanticide. By the end of the century, convicted offenders could even be placed on probation rather than imprisoned (as in the case of Catherine Sotherley - LT, July 22, 1897).

However, while most cases were resolved in terms of either lunacy or leniency, this trend was dramatically and sensationally interrupted early in January 1891, when two girls found the decapitated head of an infant while they were out picking gooseberries (LT, January 8th, 1891).

The detective removed the ghastly object to the police station...It was extraordinarily decomposed, and had been severed from the body close to the ears. Upon the forehead was a deep cut, apparently caused by a tomahawk, and making a gaping wound. There was also the mark of another below. The head was that of an infant, apparently newly born.

(ibid.).

The newspapers spared little of the macabre details, noting not only the violent blows to the head but also that by the time of its discovery it was "flyblown and full of maggots" (LT, January 17th, 1891). Originally an ageing policeman and his wife, Daniel and Anna Flanagan, were charged with the murder, with great horror being expressed over the very idea of "an old servant of the Crown" being implicated in such a shocking affair (LT, January 12th, 1891). Subsequently, however, it became apparent that Daniel knew nothing of the crime, and it was the daughter, Sarah Jane, aged 30 and a music teacher (whose second illegitimate child this was) who then stood trial with the mother. The police had great difficulty locating the daughter, for under an assumed name she had fled to Wellington en route for Australia. Public interest in the trial was intense, with court galleries being crowded long before the defendants were ever due to appear (LT, January 12th, 17th and 21st, 1891), or lining the streets of Lyttelton in their hundreds to watch the women being escorted between

the gaol and the railway (LT, January 21st, 1891). The evidence was incriminating against both mother and daughter, although one of the defence lawyers, Sir Robert Stout, pleaded that it was unlikely for a woman with no criminal record to murder a child late in her life, while the daughter was simply a

poor girl, unable, as they had seen, to control herself, and resorting to that - driven to it, perhaps by her shame, which destroyed its thousands every year.

(LT, February 26th, 1891).

Stout even beseeched the jury to remember that they would ultimately be accountable to "the King of Terrors" for the verdict they made, and that on that day they would not regret having acquitted the accused. Yet despite the weepings and wailings of Sarah Jane, the pleas of Sir Robert, and the precedents set by other infanticide cases, at the end of the trial both women were found guilty and "His Honour then assumed the black cap and sentenced both prisoners to death" (LT, February 26th, 1891).

Why did this infanticide case result in the offenders being found guilty and receiving the full penalty of the law? A series of events and details seemed responsible for it attracting close public and media attention, including the earlier charging of a police constable with the crime, and the repeated fits of "hysteria" exhibited by Sarah Jane which frequently interrupted court proceedings. However, it seems that the most significant factors here concerned the sheer brutality of the offence - revealed so explicitly in the court reports and enhanced in its savageness by the accidental discovery of the gory remains by two young and innocent sisters. For among the gooseberry bushes on that overgrown section in Gloucester Street purity confronted depravity head-on, and the Victorian love of the macabre and gruesome ensured that all the grisly details were made known. The effect of this case on the populace at large was made evident in a report made early in the trial which stated that

In the whole annals of crime in New Zealand, and certainly in Canterbury, there never has been any case in which so much interest has centred as that which engaged the attention of the Court officials and Coroner yesterday. The idea of an old man of sixty-eight, with his partner in life also advanced in years, and a grown-up daughter being charged as accomplices in a crime so horrible as the murder of a child three weeks old, and the additional fact of the head being discovered in a horribly mutilated condition, severed from the rest of the body, has given rise to a general cry of horror.

(LT, January 17th, 1891)

Little wonder it seemed that no leniency could be shown. Yet after the trial concern was expressed that possibly the two women had suffered sufficient mental agony already and a petition was submitted to Wellington requesting that the death penalty be commuted to penal servitude for life - which it later was (LT, March 4th, 1891). Thus even at the last sympathy was ~~to~~ swinging back the accuseds' way, reiterating the view expressed at one point in the trial (which later appeared to have been forgotten) that "all must sympathise when they saw women in the dock charged with a capital crime" (LT, February 26th, 1891).

What should be apparent by now is the extent to which the crime of infanticide generally met with considerable leniency, the courts being reluctant to accept that mothers could kill their babies, yet still wanting to treat them sympathetically if they did. At times, however, this extension of sympathy could backfire a little, as the following case indicates. It is taken from Judge Alpers book of reminiscences¹² and refers to his involvement in an infanticide case in Canterbury in the early twentieth century involving a young servant girl who was charged with the offence:

12 O.T.J. Alpers, Cheerful Yesterday, 1951.

The jury acquitted, as they nearly always do in cases of infanticide. The foreman pronounced the 'Not Guilty' with explosive emphasis, while the other eleven looked as though they all wanted to say 'Hear, Hear!' and were only restrained by respect for the Court. But they were not content with a mere verdict of 'Not Guilty', and presently the foreman, clearing his throat, read out from a paper in his hand, in a rich brogue that left no doubt of his nationality, 'The jury wish to state that they don't believe the poor girl knew what she was doing when she did it'. That rider, of course, was intended as a super-emphatic expression of the jury's sympathy. But the judge ruled that it converted the verdict into a finding of 'Not Guilty on the ground of insanity', and, to the visible indignation of those tender-hearted jurymen, he ordered the accused, in accordance with the provisions in our Criminal Code, to be detained in custody until the pleasure of the Minister for Justice should be made known. Whatever the jury might think of the girl's mental condition at the time the crime was committed, there could be no doubt of her sanity at the time of the trial. But the Minister for Justice did not choose to let his pleasure be known for twelve months, and so she spent that period in prison. And all this because a too sympathetic jury had over-acted the part!

(Alpers, 1928, pp. 101-102).

Alpers goes on to recount how, within a year, the same girl was on trial following the discovery of the dead body of another infant in a trunk in her room. This time she was declared not guilty and discharged completely. However, while held in remand at the Salvation Army's Rescue Home, the girl had been converted and was subsequently to marry and visit Alpers one day bearing alive and well

A baby! - a rosy, healthy infant, clean and nicely dressed - such a baby as any good mother might be proud of. And there was certainly no room to doubt her pride in that infant.

(ibid., p. 103).

Such a case history certainly indicates the manner in which insanity verdicts could be arrived at when juries were faced with the dilemma both of accounting for murderous impulses in young mothers and with having

to determine the fate of women in the dock for what was still seen as a capital charge. However, Alpers attributed the girl's change of heart on the birth of her third baby to the starting effects of her conversion, for under its transforming effects it seemed to him that "an immoral and irresponsible girl had become a decent wife and mother" (ibid., p. 104). Alpers thereby ignores the other great 'change' which had occurred in the woman's life - namely marriage - for this was the first occasion when she was not confronting the prospect of bringing an illegitimate child into a social environment heavily censorious of unwed mothers, nor into a situation where the infant's welfare was likely to be dependent almost solely on the inadequate economic means a servant girl was likely to have at her disposal.

For many women in the nineteenth century the fear of pregnancy lurked as a constant reminder of their social vulnerability. While to some extent all women were apprehensive of the risks associated with multiple "confinements", death in childbirth, and so on, such fears were intensified in the case of working class women. The economic burden of an extra mouth to feed, combined with the scant nurturing and domestic assistance they could expect to receive from their husbands, often produced a very real dread of pregnancy in these women. Such fears were obviously compounded by the lack of contraceptive knowledge and measures available, and the reticence felt by the medical profession towards any intervention in the "natural" reproductive lives of women.¹³ (Levesque, 1976, pp. 26-27).

13 The reluctance to "intervene" extended to withholding physiological knowledge from women. In 1895 ignorance of the function of the umbilical cord was directly linked with the death of an infant, prompting Edward Tregear (Secretary of the Labour Department) to complain of the "miscalled purity" in a girl's education which "makes it indelicate to tell her that her dinner will pass into her feminine stomach, and not into her feminine boots". To guard women from "weakness", he scorned, "we teach them about the population of Berlin. Damn the population of Berlin" (LT, November 25th, 1895).

As intimated previously, these pressures were felt most keenly by single women, who as well as facing the stigma of pregnancy outside of wedlock were confronted also by a paucity of options following the birth of the child. Unmarried mothers found it almost impossible to obtain employment while bearing in their arms "proof" of their "fallen" nature, while the chances of successfully petitioning the father of the child for support were often minimal. Yet disposing of unwanted children was also problematic (Levesque, 1981, pp. 135-138), since the "charitable" institutions often claimed to be overcrowded and were generally reluctant to accept young infants (Whelan, 1956, cited in Macdonald, 1977, p.20). "Babyfarmers" could be employed who, for a fee, would guarantee to care for such children, but the credentials of some of these women were frequently suspect,¹⁴ and the fees charged often excessive (Anderson, 1980, p. 131). It was within this context that infanticide became a viable, albeit unfortunate, choice.

Considerations such as these can assist us in understanding why mental illness was presented as such a class-related phenomenon in nineteenth century New Zealand. The incidence of mental disease was seen as most

14 The most notorious baby farmer from this period, Minnie Dean, systematically administered laudanum to the children in her care and buried the bodies in her flower garden at Winton, Southland (New Zealand Heritage, IV, 54, pp. 1509-1512). The "sordid and mercenary" nature of the murders Minnie committed beneath the guise of benevolence (LT, August 1st, 1895) earned her the death penalty, and she was in fact the only woman ever to be hanged in New Zealand. The cold-blooded nature of Minnie's crimes, and the lack of extenuating circumstances such as puerperal mania which could be invoked, were no doubt partly responsible for the minimal public agitation expressed over her death (Macdonald, 1977, p.20). Nevertheless, it was reported of a Canterbury Women's Institute meeting held the following year that "The case of Mrs Dean, the murderess of foundling children committed to her care, led the Institute to consider the matter of capital punishment..." (LT, February 11th, 1896). Accordingly, they forwarded a resolution to the Minister of Justice urging that capital punishment be abolished. (The death penalty for murder was abolished in 1941, restored in 1950, and again abolished in 1961 (Robson, 1967)). A more immediate official response to Minnie Dean is reflected in the passing of the Infant Life Protection Act, 1896, which aimed to establish licensed homes for



Plate 4: Minnie Dean

Minnie Dean, the Winton baby-farmer and the only woman ever to be hung in New Zealand.

Source: New Zealand Graphic and Ladies Journal, July 20th, 1895.
Reproduced in New Zealand's Heritage, IV, 54, p. 1509.

common amongst either male labourers and tradesmen or female domestic servants (Primrose, 1968, p. 205). An analysis of asylum admissions in 1881 revealed that servants accounted for 10 per cent of such admissions at a time when they constituted only 2.4 per cent of the total population (ibid., p. 209). It seems likely that the economic and social powerlessness of working class women rendered them particularly susceptible to institutionalisation, but this social vulnerability was frequently masked under a guise of constitutional inferiority. Innate "causes" were therefore often attributed to acts committed in response to pressures from the social environment.

CONCLUSION

Women in nineteenth century Canterbury were often victims suffering economically, socially, politically, and culturally as a result of their demeaned social status and their structural position of subservience. Superficially, the presumption of coverture may have appeared to "protect" married women from conviction and imprisonment, but the assumptions on which it was based reveal the extent to which women were defined as becoming their husbands' chattels on marriage, and denied any "right" to independent thought or action.

The double-bind of being "damned if they did and damned if they didn't conform" to the approved feminine sex role impinged on the lives of all women. To conform meant to accept the denial of rights and self-determination prescribed by this role and to settle for a life of submission and servility with only the dubious advantage of possible courtroom "leniency" to compensate for such compliancy. Deviation from the norm, however, was construed as so unnatural as to be considered irrational, and thus interpreted as evidencing insanity.

All women in colonial Canterbury, married or single, upper or lower class, had their lives severely constrained to some extent. While gentry women were confined within the dictates of a "narrow and decorous" role (Eldred-Grigg, 1980, p. 90), working-class women struggled to earn a living in a society reluctant to accord them the wherewithall to do so. The harsh social realities associated with the insecurities of their economic position were manifest in such phenomena as servant exploitation and domestic violence and evidenced through recourse to "coping" mechanisms such as alcohol.¹⁵

However, the tendency was to ignore such social realities in favour of adopting an ideological stance which could legitimate a view of them as victims on the grounds of innate, rather than ascribed, characteristics. Thus it was constitutional inferiority which was seen as rendering women weak and powerless. The structurally induced realities which made women vulnerable were obscured by a perception of them as perpetually fated to remain in the victim state because of their "natural" frailty, passivity, stupidity, and irrationality. Hence even in the role of offender, women could be portrayed as victims, for the female predisposition towards insanity precluded much serious consideration of their criminal responsibility.

15 It was reported from England in 1895 that while the Bishop of London had passionately been condemning the evils of indulgence in alcohol at a temperance meeting, he was interrupted by a woman shouting from the back of the hall,

"Have you ever stood over a washing-tub all day? If you've done that you would know something about it, and you'd better do something like that before you talk about something you don't understand".

The Bishop was unable to deny that "she hit him hard" with the allegation, and in response commented on how those who worked with their bodies rather than their brains were obviously placed under greater temptation. What this proved, he said, was why working class men made the best temperance missionaries (!) (LT, January 23rd, 1895).

Thus mens rea (or criminal intent) had to be proven for women committing crimes while it was much more easily assumed for men. Exceptional men, therefore, did not have criminal intent, while only exceptional women did (Personal comment, June Fielding, 1981). This may help us to understand why women appearing before the courts could be seen both as "victims" and as "monsters". In part, the next chapter will involve exploring this dualism within the context of the sexualisation of women and crime in nineteenth century Canterbury.

CHAPTER 5

DAMNED BY THE DOUBLE STANDARD: THE SEXUALISATION OF FEMALE CRIME

"A woman is beautiful to look upon, contaminating to the touch, and deadly to keep."

(Kramer and Sprenger (1486), 1971 edition, p. 46).

A recurrent theme in the literature on women and crime has been the tendency to sexualise the female offender. As we saw in Chapter 2, this process essentially denotes a perception of women turning to crime for primarily sexual reasons, and on this basis lust and erotomania have been offered as explanations for female participation in crimes ranging from prostitution (e.g. Glueck and Glueck, 1934), through to larceny and kleptomania (e.g. Stekel, 1911-12), and even terrorism (e.g. Cooper, 1979).

A corollary of the eroticising of female crime has been the equating of immorality in women with criminality in men (e.g. Cowie et al, 1968; Lombroso and Ferrero, 1895), and the operation of this assumption in conjunction with a double standard of morality has led to the often repressive policing of "promiscuity" and "fecklessness" in teenage girls (e.g. Chesney-Lind, 1973; Smart, 1976). The stringent measures taken to control female sexual expression reflect the largely male-inspired fear that, once awakened "carnal lust...is in women insatiable" (Kramer and Sprenger (1486), 1971 edition, p. 47), and that in the interests of preserving continued female confinement within the reproductive and nurturing roles, it is desirable for women to be kept in a state of sexual repression.

As this chapter unfolds, the sexualisation of female offending in nineteenth century Canterbury should become progressively obvious. Reticence to discuss sexual matters publicly is apparent in the minimal amount of material which explicitly states sexual desire in women to be problematic. However, the forms which the policing of women assumed throughout the second half of the century testify to the existence of strong beliefs in the dangers of unchecked female immorality, and the expression of this concern was triggered by different issues during the various stages of the colony's development. Thus, as we shall later examine in greater detail, in the early years of Canterbury's settlement it was anxiety over the quality of female immigrants and the need to regulate the lives of any who turned to prostitution for a living which provoked extensive intervention in the sexual lives of some of the province's women, with this being achieved in part through the provisions contained in the Vagrancy and Contagious Diseases Acts. In the 1890s campaigns to eliminate colonial vice resulted in attempts to more rigorously control sexual expression in younger women also, while throughout the century fears of moral pollution and contamination were voiced in terms of needing to control the sphere of influence of the "impure" in order to preserve and protect the innocence of the "pure" at heart.

Inasmuch as Canterbury was largely founded on a morality initially imported from Britain and enforced through a British-based and evolved judicial system, it is important now that we establish a clearer understanding of the particular beliefs giving rise to the policing of female immorality. For nowhere has such anxiety over the perceived social threat posed by female sexuality been more evident than in Victorian sexual ideology. Built upon the cornerstone of the double standard of morality, it

simultaneously excused, and even made provision for the safe expression of, "uncontrollable" sexual lust in men while subjugating women within the confines of a presumption of sexual passivity. Evidence of sexual feeling in women was interpreted as signifying wanton abandonment and, when acknowledged, was often portrayed as a predominantly working-class characteristic. The notion of strong sexual inclinations in the "lower classes" was accepted by many middle and upper class Victorians, who while they believed respectable women to have had sex virtually refined out of them, were not so sure that such primitive urges were equally under control in the case of those of the labouring classes (Crow, 1971). For the belief was strong that "where the masses mostly congregate, there is vice" (LT, November 28th, 1867).

Thus the Victorian rejection of sexuality in women was accompanied by, and possibly even resulted in, the sexualisation of much female offending. The assumption that sexuality in women was an evil occurrence was often translated into the view that only "bad" women could in fact be sexual - an assumption strongly suggestive of the madonna/whore duality which will be considered later in this chapter. Thus, in very simplistic terms, most women were idealised as pure and good, and were also seen as sexually passive. However, those women portrayed as "bad" often had their "badness" linked to their capabilities for, and indulgence in, sexual activity. The women who most blatantly expressed their sexuality were accordingly characterised as whores and then cast in the same category as male thieves and vagrants.

Differences in the perception of male and female sexuality led to major differences in the policing of each. The male sex drive was presented as rampant and animal-like in all men, requiring satisfaction on demand

from women. A wife who frustrated her husband sexually could therefore be responsible for his turning to prostitutes for "relief", but the male was never blamed or punished for indulging in what was seen as "natural", heterosexual intercourse. Heavy penalties could be incurred by men, however, whose sexual preferences or circumstances led them into bestiality, or homosexuality, or, to a lesser degree, to intercourse with children, or to rape. Thus the sex crimes for men were those acts seen as perverse and unnatural, or acts of sex accompanied by violence.

The sexualisation of female crime, however, is evident in the way in which sex "crimes" for women occurred usually from "natural" sexual relations, i.e. from heterosexual intercourse with an adult male consenting partner. Thus promiscuity and prostitution were policed in women in ways they have never been policed in men. The view of female sexual feeling as unnatural became translated into an attitude which considered sex per se to be immoral and criminal in women, while acceptance of sexuality as natural in men was translated into a rejection of only those acts deemed perverse or accompanied by violence.¹ Any sexually-linked act in women could therefore be construed as unnatural and, since female sexuality was a bad and evil corrupting force, condemnable. In this light the double standard of morality which, as we will see later, so obviously undergirded attitudes towards prostitution and the Contagious Diseases Act, becomes more comprehensible, and the charge of female crime being sexualised

1 The legal sanctions against male homosexuality in the nineteenth century were not extended to lesbianism in part because "it seemed incongruous to suggest that women were capable of actively making sexual advances towards other equally passive women" (Edwards, 1981, p.45). Ignorance of the nature of heterosexual intercourse may also have been influential, for the belief was prevalent that in the male semen was contained the whole of the embryo, with the female womb being merely a receptacle for its nourishment. Thus "spending" semen through homosexual practices seemed more heinous than sexual exchanges between women (Chesser 1971), cited in Al-Issa, 1980, p.210). (The importance attached to male sperm will become more evident later when mention is made of the evils of masturbation for men, etc.).

in a way which male crime is not, similarly becomes more sustainable.

The fear of animal instincts and baser passions lay at the heart of much of the Victorian attitude towards sex. The 64 years of Queen Victoria's reign coincided with a period of dramatic and sweeping social change as the nation underwent economic and technological transformation (Crow, 1971; Pearson, 1972). Civilisation in general and education in particular were seen as providing the means whereby society could shed its previous barbarism and move on to a less brutal and "primitive" state, in keeping with the emerging evolutionary notions of societal progression. Since part of the "civilising" strategy necessitated taming "the savagery of sex", the latter was increasingly banned from everyday life (Crow, 1971, p. 25).

The "banning" of sex was evident in a variety of ways. Censorship was widely practised and a horror of the nude cultivated which extended even to art forms - thus segregated visits were organised for the viewing of nude statues in some art galleries (ibid., p. 27). In 1866 the criticism was made that a gentleman would consider

the naked beauty is obscene, and the naked
truth is blasphemous, he thinks that the
Venus de Milo came out of Holywell Street.²

(Thomson, 1866, quoted Trudgill,
1976, p. 3).

Language was modified to remove, among other things, "legs" from women and replace them with the more modest "limbs", while an American school-mistress was reported to have taken this to the extreme by dressing the four "limbs" of the piano in her all-girls' school "in modest little

2 Holywell Street was the famed nineteenth century centre of London pornography dealers!

trousers with frills at the bottom of them" (Captain Marryat, 1839, quoted Degler, 1974, p. 1467). Masturbation was a taboo subject, reputedly linked with "gibbering lunacy" (Crow, 1971, p. 176) and feared because of its consequences in the lavish "spending" of sperm -

The Victorian belief was that ejaculation, more especially when it was self-administered or indeed involuntary, was wasting a man's substance.

(ibid.)

Excessive copulation was condemned on similar grounds - the American manual Conjugal Sins, published in 1870, virtually recommended that the only way to escape the nervous exhaustion and debilitation which accompanied sexual indulgence was to restrict copulation to high noon on Sundays only! (cited Barker-Benfield, 1972, p. 50).

The notion of sex for pleasure became almost blasphemous - parthenogenesis (procreation without sex) would probably have been the ideal, but its impossibility forced the Victorians to settle for intercourse as a never-discussed, silently-completed, fumbling in the dark, often painful ritual, valuable only for its procreative results. Women were typically feared as "sperm absorbers" (ibid., p. 55), and the female role in the sex act was to be the passive recipient of what would hopefully fuse to become new life.

The belief that sex was for procreation (so far as women were concerned) lay at the heart of much of the fanatical opposition to contraceptive measures in the nineteenth century. Although these were becoming more widely, if silently, practised by the English middle classes from the 1860s onwards, nevertheless to engage in intentional birth control was condemned as "a harlot's habit" (Crow, 1971, p. 280). Those who attempted to publish material on contraceptive practices were liable

to be prosecuted, as occurred in the trial in 1877, of Charles Bradlaugh and Annie Besant whose efforts in this area resulted in their being lambasted as depraving of public morals (ibid., 286; Rover, 1970, p.104). The medical profession in New Zealand was also typically opposed to the use of contraceptive measures, with Dr. Herbert Barraclough condemning in 1905 the

disgusting nature of this practice...in the highest degree immoral. To stunt and deaden the divinest emotion of the soul is worse than suicide - it means the destruction of one's highest nature.

(quoted Levesque, 1976, p. 26).

Thus even though more contraceptive measures were becoming known to the medical profession than the sponge or coitus interruptus, information about these was not always being disseminated because of the fear of the ~~moral damage~~ moral damage which could follow. If the link between sex and reproduction was broken in women's minds, their bodies might be given over to passion and the maternal instinct dulled. Also of concern was the fear that the use of contraceptive measures might limit population growth to such an extent that the white races might lose the "race war" (ibid., pp. 26-27).

Ignorance of contraceptive measures and the "natural" purity of the female were ideally seen as protecting women from the animal passions of sex. Acton claimed that most women "are not very much troubled with sexual feeling of any kind" (Acton, 1862, p. 101), maintaining also that

Love of home, children, and domestic duties are the only passions they feel. As a general rule, a modest woman seldom desires any sexual gratification for herself. She submits to her husband, but only to please him; and, but for the desire of maternity, would far rather be relieved from his attentions.

(ibid., p. 102).

The well-bred Victorian woman was taught to shun sexual pleasure, and she could be thrown into trauma should she find herself experiencing it by the oft-cited knowledge that "only lascivious women experienced genuine physical pleasure" (quoted in Trudgill, 1976, p. 62).

Thus Victorian ideology included very strong notions of women's sexual "anaesthesia", a term coined by Havelock Ellis to describe what he saw to be a nineteenth century creation (Cott, 1979, p. 162). This ideology became accepted by many morality definers of the day and was adopted into a variety of areas of nineteenth century thought - for example, the criminologist Lombroso maintained women to be "naturally and organically frigid" (quoted in Edwards, 1981, p. 23). The medical profession argued that it was dangerous for women to know too much about the structure and functioning of their bodies, although the training of women doctors came to be advocated by a minority as a means of curbing the growing licentiousness among young male medics whose passions were daily influenced in the course of their inspections of female patients (Newman, cited in Cominos, 1963, p. 46).

The advisability of keeping women ignorant of sexual matters was reflected also in the manner in which the hearing of any court cases likely to include evidence of a sexual nature was preceded by clearing women and children from the courtroom to avoid their moral pollution³ (Lord Mount-Temple, 1883, quoted in Edwards, 1981, p. 27).

3 This attitude is strongly reminiscent of the fears expressed in Christchurch that to be required to carry out brothel inspections would be to place doctors under threat of contamination (LT, November 22nd, 1867; Macdonald, 1983, forthcoming), and in the clearing of women and young persons from the courtrooms during the hearing of abortion cases (e.g. LT, March 4th, 1869; June 1st, 1893).

To plead to a woman's desire to be seen as "respectable" was to remind her of the high value attached to her purity and noble virtue within Victorian society. Mrs Sarah Stickney Ellis had appealed to the women of England in 1839 to remember their responsibility for "preserving the moral fibre of the nation" (Dalziel, 1977, p. 112), while Wakefield's colonisation plans for Canterbury and the other settlements stressed even more emphatically the desirability of ensuring the immigration of large numbers of women whose role would be to safeguard the pure and proper development of the colony. According to Wakefield,

As respects morals and manners, it is of little importance what colonial fathers are, in comparison, with what the mothers are.

(quoted *ibid.*, p. 113).

Women were depicted as the civilising influence in the new land, the tamers, the pacifiers, the subduers of all that was coarse and bestial in men (Bunkle, 1980, p. 72). Without a woman's presence it was feared men would regress into a state of vulgar barbarity. Accordingly Charlotte Godley wrote home of how she had urged two young bachelors on an isolated Canterbury station to set up a female dummy in the absence of a "real" woman in the house:

I have begged them to have a lay figure of a lady, carefully draped, set up in their usual sitting-room, and always to behave before it as if it were their mother, or some other dignified lady. They did not quite promise this...

(Godley (1852), 1951, p. 282).

The role of women as mothers and home-makers came to be increasingly lauded during the nineteenth century, especially as the earlier optimism of a colonial "utopia" came to be replaced by a growing awareness

of the social ills and stresses of the day. It was up to the women to redeem the situation, to provide a peaceful sanctuary for their menfolk, away from the pressures of public life, to raise their children to be upright and law-abiding, and to satisfy their husbands so that the latter should not be compelled to resort to prostitutes, or alcohol, or both. As Anne Summers expressed it, in writing about the colonisation of women in Australia, this was the situation where the importance of women as "God's Police" came to the fore (Summers, 1975).

Efforts to keep women in their "place" extended to increasingly eulogious tributes being paid to the high value of domesticity and the notable calling of maternity - as Olssen and Levesque have commented, from the 1880s onwards in New Zealand,

Mother became the cult figure, her temple the Home. She became by definition a moral redemptress, a figure of purity and chaste love, the home a place of refuge and moral elevation.

(Olssen and Levesque, 1978, p.6).

Yet the transformation in status from drudge to "Queen Mother" was accompanied by little change in either the nature of the tasks performed or the social opportunities afforded women - in some ways it represented but the consolidation of the traditional Victorian role of women, for as a sex their lives now corresponded to those of "enslaved angels" (Harrison, 1979, p. 43).

However, the "cult of domesticity" was by no means simply imposed on women, but was argued for and defended by women as well as men. It was in fact firmly linked to the first wave of "feminism" in New Zealand and the campaigning for women's suffrage (Bunkle, 1980; Dalziel, 1977), although its full expression was probably not realised until the first two decades

of the twentieth century, and was epitomised by making Home Science courses compulsory for all high school girls (Olssen, 1980, pp. 179-180). Moreover, it was primarily lower middle class men and women who most obviously exhibited the "God's Police" morality and who championed the various social purity crusades in nineteenth century New Zealand, calling for the total prohibition of alcohol and prostitution, and for the granting of women's suffrage in order to guarantee such ends (Bunkle, 1980).

The significance of class⁴ needs to be stressed as a factor in the promulgation of Victorian sexual ideology, for the ideals of purity, passivity, moral guardianship and so on were very much the ideals of an emerging middle class which saw its particular social and economic interests being best served by these virtues.

Political power in Canterbury had initially been held almost completely by the landed, predominantly Anglican gentry, and it was they who dominated much of the early thinking of the province. Membership of the Provincial Council was virtually controlled by this class, and the fact that there was only one non-Anglican member of the 1867 Social Evil

4 Following Erik Olssen (who has written extensively on class in nineteenth century New Zealand, e.g. Olssen 1974; 1977; 1981), the concept of class is being used here to refer primarily to conflict groups within society, and implying at least some degree of consciousness. The tentative outline which follows provides the background for the use of class in this thesis. The uppermost sector in Canterbury society was the landed, mostly Anglican gentry - the pastoral elite - who politically were often supported by an upper class of wealthy bankers, merchants, investors and so on. A small upper middle class consisted mainly of less wealthy businessmen and manufacturers, and professionals such as lawyers and doctors. The lower middle class comprised mostly clerks, small businessmen and self-employed tradesmen, and it was this sector (and especially its church-going members) which headed the 1890s social purity crusade. They were often supported in their campaign by the skilled workers (the "aristocracy of labour" e.g. blacksmiths, bootmakers etc.), while unskilled labourers were ranked as the lowest occupational sector, characteristically working in low-paid, manual, often transient employment (e.g. seamen, shearers, miners etc.) (Based especially on Olssen, 1977, pp. 266-267). Note: These definitions are male-based, since women were generally seen to derive their class status via their husbands.

Committee (Eldred-Grigg, pers. comm. 1983) explains in large part the impetus which came from Canterbury in calling for the implementation of the Contagious Diseases Act in New Zealand. The gentry's attitude to prostitution was characterised by an acceptance of it as a necessary service industry, albeit one that needed to be regulated and "civilised". Although its political influence saw the Act passed, calls for repeal quickly came to be voiced mainly from the middle classes, with these becoming more and more forceful as the century progressed.

Josephine Butler's efforts to mobilise British women against the Acts resulted in the English Contagious Diseases Acts being repealed in 1886 (Cominos, 1963, p. 47; Rover, 1970, Chapter 9; Trudgill, 1976, p. 192), but it took a further 24 years for them to be repealed in New Zealand. At the forefront of the campaign for their repeal were the largely lower middle class social purity crusaders, committed to policies intended to reform and purify the nation. One of the most influential of these groups was the Women's Christian Temperance Union (W.C.T.U.), which although small in numbers⁵ was nevertheless an energetic and vital campaigning body. As well as advocating the total prohibition of alcohol, W.C.T.U. fought hard to achieve the repeal of the Contagious Diseases Act (about which more will be said shortly), opposing the double standard of morality contained therein. Their opposition emanated from a fear that sex for pleasure would be encouraged or tolerated in any manner whatsoever. Purity demanded that copulation be for procreation only, for both men and women alike. To regulate the prostitution trade was to enter into a "compromise with sin" (Bunkle, 1980, p. 63); hence the Contagious Diseases Act was considered to have implemented a system of "state licensed harlotry" (ibid., p. 72)

5 Membership of W.C.T.U. from 1885-1895 was in the vicinity of only 600 (Bunkle, 1980, p. 58).

Opposition to the double standard was not, therefore, necessarily a feminist-motivated concern, for even though both feminists and social purity crusaders alike opposed the way in which sexual expression was being repressed and punished only in women under the Contagious Diseases Act, their reasons for such opposition differed. The feminist protest in part derived from their resistance to yet another means by which only women's lives were interfered with and controlled by the State, while the social purity crusaders would ideally have liked to see both men's and women's lives more repressed and controlled when it came to Sex. Thus while the feminists could maintain sex for pleasure to be the "right" of both men and women, the social puritans would argue it to be the right of neither, and if indulged in for other than reproductive purposes by either sex to inevitably lead to the damnation of both (Bundell, 1980, p. 63).

The proliferation of prohibition and social reform organisations in late nineteenth century New Zealand was largely a middle class phenomenon whose political influence grew with the installing in 1891 of the first Liberal Government. Yet the gentry's power was by no means defunct, and the debate over the Contagious Diseases Act raged throughout the 1890s, often with the puritans pressing for repeal in the same Parliamentary sessions as the gentry were calling for the extension of the Act to other parts of the country (Levesque, 1981, p. 141; Sutch, 1973, pp. 93-95). Yet it was the middle class which was the most vocal and whose efforts at purification and prohibition have become almost synonymous with our view of Victorian New Zealand as a whole. Educated and ambitious, they were the class most concerned with safeguarding their growing property interests (Crow, 1971, p. 25). Through copious letters

to newspaper editors, records from public meetings, and minutes from league and society meetings, the purity crusaders have left us a rich legacy of middle class thoughts and sentiments. However, essentially its class origin must be recognised so that we do not mistakenly attribute its concerns to be those of all sectors of New Zealand society, for, as we will increasingly see, great differences in attitude existed towards various nineteenth century social phenomena.

Much of what has been taken as descriptive of Victorian life may, in fact, have been only prescriptive (Degler, 1974), with those concerned about social purity in New Zealand referring more and more to a set of ideals for safeguarding the moral fibre of the nation which were seldom found in practice. It is possible that, as Penelope Gregory has suggested,

A social stereotype of respectability was firmly imprinted in the colony's consciousness, but it seemed to be a stereotype which featured more often because of its absence than its presence.

(Gregory, 1975, p. 23).

Regardless of whether or not the ideals ever became a reality it seems that the lives and experiences of nineteenth century women were often determined in large part by the extent to which they "fitted" the stereotype. Thus

The sexually passive woman was perceived as a good mother, daughter or wife, whilst the woman who was not passive was altogether bad and sinful.

(Edwards, 1981, p. 35)

The very existence of these two stereotypes was itself demanded by Victorian sexual ideology, for at the same time as it proclaimed the passivity and purity of women it acknowledged the lust and bestiality of

men. If a man could have sex for only procreative purposes with his wife, then for pleasurable indulgence he would turn to the prostitute. The virtue of "modest" women was thus to be safeguarded by ensuring easy sexual access to other women, who if they obliged would then be labelled harlots.

If woman had been turned into the Virgin in the drawing-room she had to compensate for this by being the prostitute elsewhere.

(Crow, 1971, p. 30).

The madonna/whore duality thus expressed the perennial ambivalence in man's attitude to female sexuality, for the latter was associated both with reproduction and eroticism, offering men simultaneously a means to control the future (through genetic inheritance) while causing them to lose self-control in the present. The effect of Victorian sexual ideology was to wrest these two aspects apart, such that the respectable wife was portrayed as pure and passionless and protected in this state by the depiction of her sister as the sensuous whore. Feminine purity and gentility was generally upheld as a middle and upper class characteristic while "working class women were not seen as chaste or as ladies" (Edwards, 1981, p. 35). Thus the class factor played a significant role in nineteenth century stereotype formation, although it was by no means the sole definer of a woman's sexual destiny.

THE MADONNA/WHORE DUALITY

Anne Summers' material on the colonisation of women in Australia (cited in Chapter 2), draws attention to the social control functions served by the polarised view of women as either "Damned Whores" or "God's Police". The basic criterion determining a woman's categorisation in terms of one or other of these stereotypes revolved around the extent

to which she conformed to the socially prescribed code of "acceptable" femininity. Hence women adhering to the prevailing norms of respectability would be identified in terms of the "God's Police" stereotype, while those whose lifestyle ran counter to these ideals risked social censure as "Damned Whores".⁶ Thus, "Women are divided according to whether or not they are prepared to uphold the colonial order" (Summers, 1975, p. 248), and the fact of their division from each other serves to provide the means whereby all are ruled. Through the polarisation of women an essentially outcast group of "bad women" was created, whose ostracism and victimisation were intended to deter other women from rebellion and non-conformity and so ensure their allegiance to the "God's Police" camp.

Before applying Summers' dichotomy to the Canterbury situation, we will briefly consider its utility within the Australian context from which it emerged.

Australia's convict past has been blamed for many of the country's social ills, including its extreme chauvinism (Dixson, 1976), with much of the blame centering around the huge sex ratio imbalance which characterised the nation's early development. Of the total of 150,000 convicts transported from England to Australia between 1788 and 1852, only approximately one-sixth were women (Sturma, 1978, p. 3; Summers, 1972/73, p. 15), and even this representation of women in the penal colony required transportation for women for far less serious offences than for men (Summers, 1975, p. 268).

6 The latter, as we saw in Chapter 2, could include prostitutes, women prisoners, lesbians, solo mothers and feminists, since all these women can be perceived to challenge the idealised feminine role.

Historians have typically presented such women as wanton whores banished to the colony as punishment for their waywardness, whereas Summers maintains that whoredom was expected and even demanded of all women entering Australia at this time. She argues that

It was deemed necessary by both the local and the British authorities to have a supply of whores to keep the men, both convict and free, quiescent. The Whore stereotype was devised as a calculated sexist means of social control and then, to absolve those who benefited from it from having to admit to their actions, characterised as being the fault of the women who were damned by it.

(ibid., p. 286)

Thus Summers presented the twin stereotypes as emerging in two successive stages in Australia. An "all women as whores" first stage only gave way in the mid-nineteenth century, with the emergence of the bourgeois family, to a situation characterised by the "some women as whores and some women as God's Police" dichotomy.

While there is no doubt some truth in the above, it being consistent with what we have already seen regarding the double standards surrounding male and female sexuality, it is too sweeping a generalisation to do justice to the complexities of colonial social life. Other evidence suggests that by no means were all women in early Australia whores, and, more importantly, it calls into question the contemporaneous use and abuse of that and associated terms. The high value placed on chastity and purity for women meant that any sexual aberration could result in the label 'prostitute' or 'whore' being applied, even to women whose only "crime" was cohabitation outside marriage (Sturma, 1978, p. 6). We must also remember that it was essentially middle class notions of chastity and purity which formed the basis of the sexual ideology and that, often

for financial reasons, cohabitation was an accepted part of working class life and not necessarily deemed immoral.

Summers' contention that whores were made an outcast group and ostracised by the rest of the society to the extent that even the worst convict males would refuse to marry them becomes problematic at this point. The low rate of marriage in Australia has been shown to reflect more the extent of "official impediments to matrimony" than the personal reluctance of convict men to take wives (Sturma, 1978, p. 9), while economically marriage was a risky prospect given both the low wages and high demand for mobile and seasonal workers. Additionally, it was only those of the middle and upper classes who ostracised whores, for cohabitation was accepted within working class culture along with prostitution (in the first half of the nineteenth century at least), with the prostitution role being one of several social identities which such women could hold within working class communities (Walkowitz and Walkowitz, 1974).

At first glance an examination of the nineteenth century Canterbury court data in the light of Summers' typifications does seem to provide a wealth of supportive evidence for her polarised imagery. The language of the day seemed to make frequent reference to there being both decent women and prostitutes, respectable women and harlots, with the inhabitants found in a bawdy house in 1862 being described in court as "diverse evil disposed persons, as well men and women and whores" (Supreme Court Record Book, 1862). Similarly, descriptions of women appearing in court tended to refer either to their being respectable and well-dressed or to portray them as "bad women" with "loose characters", "abandoned women of the lowest class". Public concern was often expressed over the

way in which prostitutes and drunken women would congregate in particular areas of the city, such that the latter became too unsavoury for any respectable woman to walk through (LT, November 22nd 1867). Complaints were often made about the area surrounding the Theatre in Gloucester Street, with one gentleman being prompted to write to the Lyttelton Times in 1882 protesting at the way in which "our wives, daughters and sweethearts...the respectable people" were being elbowed by men and even worse by women "who have the appearance of animated dram⁷ shops" (LT, April 18th, 1882).

Such polarised sentiments were also expressed at times about younger girls. In 1896 a letter calling for the age of consent to be raised intimated that there were both good girls and bad girls who could be involved in sexual relationships, the good girls being those who had been seduced by men who should be hung for the evil they had done, while "on the other hand, there are girls who ought to be put in an Adamless Eden" (LT, April 22nd, 1896).

The debate over the employing of women as barmaids was characterised by anxiety as to whether such an occupation could lead to their being altogether "lost to respectable society", since it would undoubtedly reduce them to being "loose in manner (and) low, coarse and vulgar in speech...And if perchance they marry, what kind of wives do they make? And do not their progeny also carry with them through life the taint of the bar?" (LT, March 3rd, 1883). Recognition of what was seen as a positive social function emerging from the yawning chasm which existed between good mothers and bar-maids and between madonnas and whores was

7 i.e. "rolling drunk", a dram-shop being a public house or bar.

given in a letter to the paper in 1871 which requested of brothels in Christchurch that they be allowed to "exist as a safeguard to the virtue of the respectable part of the female community" (LT, March 22nd, 1871).

However, there are dangers in trying to apply Summers' typifications too rigidly in the New Zealand situation.

Firstly, New Zealand's settlement occurred somewhat later than Australia's, and for reasons other than the establishment of a convict colony. The Wakefield scheme of colonisation aimed to ensure a proper mixing of the classes. Great pains were taken to select the right combination of immigrants needed to transpose Britain's class hierarchy on to the new colony, and the co-existence of prostitutes alongside the Lady Barkers and Charlotte Godleys of the province means that, even more than was the case in Australia, any application of Summers to New Zealand would have to be able to account for the simultaneous, rather than the successive, arrival of both the whores the God's Police, the prostitutes and the gentry, on our shores.

Secondly, historical evidence suggests that it is not possible to isolate one single category of whoredom. For Summers the category of whore, as we have seen, seems to include all prostitutes and criminal women as well as any other women whose lifestyle could be seen to threaten the existing social order (Summers, 1975, p.154 ff; p. 248). In actuality, however, a more complex set of attitudes existed in nineteenth century Canterbury towards prostitutes and imprisoned women than is conveyed by the "Damned Whores" label.

It seems, in fact, that by no means were all criminal women tarred with the same damned whore brush. Much of the material contained in Chapter 4 provides evidence of cases in which "respectable" women were also seen

to come up before the Courts and sentenced to terms of imprisonment. The fact of their conviction was obviously not seen as transforming them into instant whores, or otherwise such measures would not have been sought as those designed to ensure their protection in goal from the contaminating influence of "drunken prostitutes". Frequent calls were made during the later nineteenth century for ways of classifying and separately accommodating the different types of female prisoners, with it being constantly urged that the "comparatively innocent" should be kept apart from hardened whores (e.g. LT, February 11th, 1868; March 11th, 1871). Judges and magistrates often expressed grief at being forced to confine "respectable" and "abandoned" women together (LT, March 4th, 1869; September 2nd, 1869), or even at having to imprison "respectable" women at all.⁸ Thus in 1869 His Honour Mr Justice Gresson indicated that his being compelled to confine all criminal women together could result in substantial leniency being accorded "respectable" women for, he stated,

I cannot help look at it in this light - that the fact of a person who is not utterly abandoned being forced to consort with females who are, very much aggravates the punishment.

(LT, September 3rd, 1869).

Even where a woman was a confirmed whore she would not always be victimised in the courtroom for being such. Jane Glass was well known as a prostitute and had a long list of previous convictions produced as evidence against her when she appeared in the Magistrates Court in 1869 charged with robbery from the person. This offence arose when the male victim accompanied her home while intoxicated and was allegedly robbed later while in a satiated sleep. His Worship said he was sure Jane had

⁸ For example, Sarah Steel was dismissed without sentence so as to avoid "compelling her to mix amongst hardened criminals" (LT, September 26th, 1871).

committed the robbery but the evidence was not sufficiently conclusive to convict her and she was given the benefit of the doubt and dismissed (LT, February 13th, 1869).

Other instances occurred where the courts would intervene to protect the rights of prostitutes against possible victimisation by the police. Sarah Hayward, a known prostitute, was arrested for behaving improperly but the case was dismissed against her when she pleaded that the man following her had done so "without any invitation or inducement on her behalf" (LT, May 8th, 1871). In 1893 a detective tried to get two old-timers - Bella and Mary McKegney - convicted of using indecent language in a public place, but the Bench declared the language was not indecent and their case also was dismissed. Similarly in 1883 police evidence was presented in court against Margaret Thompson to support a neighbour's complaint that her house in Victoria Street was a disorderly brothel. However, she was discharged with a caution for "The Bench considered that it was hardly competent to convict the accused of having no lawful means of support merely because she kept a brothel" (LT, March 21st, 1883). The fact that a woman was a prostitute was not seen by the sentencing personnel at least as any reason for her to be unduly harassed by male citizens either. In 1882 seven men went from brothel to brothel late at night forcing the women to provide them with alcohol, abusing them, and smashing windows in some of their houses. His Worship was adamant in court that the prostitute status of these women in no way excused the men's actions, and they were sentenced accordingly (LT, November 2nd, 1882).

It therefore seems simplistic to assume that all women offenders were seen as whores or that all whores were automatically victimised and discriminated against for being such. Not all prostitutes were regarded as

totally abandoned whores - some were still regarded as redeemable, and thus the Resident Magistrate Mr. C.C. Bowen, expressed gratitude and relief at the meeting on the "Social Evil" in 1867 that the Female Refuge existed for those for whom there was any chance of rescuing from their "downward course" (LT, November 22nd, 1867).

MEDIATING FACTORS

What factors mediated the application of the whore stereotype and the prescription of women as prostitutes in Canberbury? How a woman conducted herself in the courtroom seems to have influenced the sort of sentence she could expect to receive. We have already shown instances in Chapter 4 of women weeping before the judge or magistrate being characteristically treated with leniency, and, given the high status attached to "respectability" in the Victorian era, it is conceivable that crying was taken to be a sign of contrition, hence indicating a certain respectability of character in the defendant.

"Respectable" women, as we have seen, were often treated with leniency, but it seems that respectability through association was also advantageous to females in the dock. When young Polly Smith (aged 12) obtained groceries under false pretences in 1870, the fact that she was of good character and came from respectable parents led to the case against her being dismissed (LT, September 13th, 1870). Similarly, when Margaret Isabella Turnbull (aged 15) was convicted of larceny in 1887, Mr Beetham R.M. pointed out that she was liable to imprisonment for six months but since she was a young girl with a very respectable father he would simply release her into her father's care (LT, April 11th, 1887).

Girls who appeared to be not-so-respectable could expect to meet with a different fate, however. In 1877, a fifteen year old girl was taken to court for leading "a dissolute life" by her brother-in-law. The latter stated that "He had no wish to punish her, but simply desired to prevent her from leading an improper life", at which point His Worship congratulated him for the action he had taken and sent the girl to Burnham Industrial School for a year (LT, August 4th, 1877).

On other occasions women who were married to men seen as "respectable" could be dismissed of an offence on the condition that their husbands took charge of them. Thus, for example, Fanny Alice Parkes was accused of being an habitual drunkard in 1883, but her husband was cited as "a respectable man" who pleaded on her behalf and promised to take her away from Christchurch if the Bench allowed her to go, and accordingly she was released into his care (LT, October 15th, 1883).

If to be of respectable appearance, behaviour, or background often reduced the harshness of the penalties women could expect to incur, and mitigated against their being labelled and ostracised too severely as deviant or "bad" women, then the converse was almost true. Women who refused to act demurely were not portrayed very well in the court reports. When Eliza Lambert was remanded for Supreme Court trial on a stabbing case, the Lyttelton Times commented how she had "slammed the door in a very violent and passionate manner" (LT, June 8th, 1869). Mary Ann Robinson lay down in the street and swore at the police when they tried to arrest her, and was later reported to have been noisy and obstreperous in court. Although she was released on this particular charge of drunkenness since it was her first for three years, the police were instructed "to keep a close watch on her" (LT, January 14th, 1870). Margaret Bowen's appearance in the Supreme Court in 1864 for keeping a disreputable house was so disruptive that she almost received an extension of her sentence, the

Canterbury Standard reporting that

She was removed from the Court uttering the foulest and most abusive language against judge and jury, thus testifying to the justice of the verdict, and almost calling for an increase of punishment.

(Canterbury Standard, December 2nd, 1864).

It seems, therefore, that demeanour, character presentation and so forth could influence court room interaction and sentencing outcomes favourably for women from "respectable" backgrounds, of "respectable" appearance, or with "respectable" connections. Of course, very few "respectable" women appeared in court anyway, for the nineteenth century justice system (just like that in the twentieth century) was directed much more against the society's socially and economically poor and vulnerable members than against those with power and influence. As we have already noted (in Chapter 4), the most vulnerable sector in nineteenth century New Zealand society were those women persuaded by their marital or financial position to obtain paid employment. Given the small range of occupations open to them, and the harsh exploitation characterising both domestic service and factory employment, it was no wonder that some Canterbury women decided to consider another alternative - prostitution.

It is important to note initially that prostitution itself did not constitute a legal offence - it was only when it became offensive to others that it was deemed to be a violation of the law.⁹ The key factor seems to have been the extent to which the behaviour caused, or was seen as likely

9 The class of prostitutes found in the streets, so long as they conduct themselves with decency and do not 'solicit', do not come within the power of the police, however offensive their presence may be to the public.

(AJHR, 1898, Vol. III, H-2, p.xxvi).

to cause, an annoyed response from passers-by or neighbours. It has accordingly been suggested that

Unless a prostitute was kicking up merry hell, she stood little more chance of being arrested than a respectable person.

(Pearsall, 1969, p. 267).

(Such a statement demands qualification, however, since the arrest of a prostitute, as we shall see later, became much more imminent when she became "known" to the police). This attitude was also associated with the extent to which prostitution was considered to be too obvious and public. Victorian attitudes to sexuality, as we have already seen, reflected the double standard of morality which tolerated sexual expression in men and condemned them in women. Thus while those of prohibitionist persuasion might have condemned prostitution outright, in practice its policing seemed to reflect a certain ambivalence. The prostitution trade seems to have been generally accepted by the sentencing personnel as a necessary service industry, tolerated as long as it was discreet, and where it was not then policed only in regard to the women concerned and not their clients.

While prostitution was accepted as a necessary evil by many, it was also hoped that its sordidness would not be too blatantly manifest as a blot on the Canterbury landscape. Much of the motivation for the campaign to regulate prostitution through the Contagious Diseases Act stemmed more from a concern to check an evil which was running riot in public than to curb the spread of venereal disease. Comparisons drawn between Christchurch and Britain produced comments typified by the following:

It is almost impossible for a decent woman to walk the streets of any of the English towns after dark, without running the risk of being insulted or utterly shamed and disgusted with what is passing around. And Christchurch is steadily progressing in the same direction. Scenes nightly take place, in some of our principal streets, which are absolutely disgraceful, and which render them unfit to be trodden with comfort by any decent modest woman.

(LT, November 18th, 1867).

It was essentially the affront to the senses of respectable citizens, but especially women, which was intolerable, and which in its rendition echoed very clearly the madonna/whore polarisation. The worst aspect of prostitution was not the risk of disease, but the risk of contamination of the pure by the impure. We have already noted this concern as it applied to "pure" and "impure" women appearing in the courts and possibly facing imprisonment together, but the lives of most respectable women would never cross those of prostitutes unless it was in very public places. The streets of the city were in fact probably one of the few social arenas likely to be accommodating both groups of women at once, and it was essentially prostitutes making their presence felt on the streets who were most likely to be arrested.¹⁰

That such concerns were dominant is reflected in the manner in which such women were spoken of in the court reports. Frequently they were described as "nuisances", as when Margaret Webster (alias Crossley), Mary Haynes (alias Kelly, alias Smith) and Elizabeth Mary Cronin (alias McKenna) were all charged with vagrancy in 1895,

10 In this sense red-light districts become understandable as areas which probably arose to segregate "necessary" vice in a manner which allowed respectable community members to avoid them, as well as keeping the virtuous safe from contamination. In effect they may have been advantageous for the prostitutes as well in rendering them relatively safe from arrest and imprisonment.

The evidence showed that the accused wandered about the streets of the city late at night; they had no fixed place of abode, and associated with men and women of the criminal class. They were a perfect nuisance to the residents of Manchester Street, and were of bad character.

(LT, January 14th, 1895).

In June, 1869, Martha Jones was arrested for being drunk and disorderly near the Theatre one Saturday night -

Inspector Pender said prisoner was a great nuisance - in fact, the worst of her class. Wherever she resided, she was at the head of all rows or disturbances, and in the streets she was a constant source of annoyance to the police.

(LT, June 22nd, 1869).

Other women were also termed public nuisances or annoyances as they were removed behind bars (e.g. LT, February 11th, 1869; May 9th, May 29th, August 4th, 1877; July 30th, 1883).

It was not only prostitutes annoying passers-by on the streets who were described in this manner, but also those whose brothels were seen as disruptive of the neighbourhoods in which they were located. In 1869 Eliza Edwards' house was presented in court as one which ostensibly appeared on the front to be a confectioner's shop, but Detective Feast testified that he had found there one evening

a host of bad characters and girls of ill-fame, with a convicted thief playing the piano. Evidence was given by a neighbour as to the great annoyance caused by the people assembling in the house, and the frequent passing of men through the adjacent back premises to get at the back door.

(LT, November 16th, 1869).

Many other cases reflected similar concerns (e.g. LT, February 11th, December 6th, 1870; July 22nd, 1871; February 7th, February 15th, March 14th, 1877; March 9th, 1881, August 25th, 1882, January 5th, December 26th,

1883) - it was only when "houses of ill fame" became too bawdy and disorderly for the public and police to ignore that their inhabitants became liable for arrest.

It was openly argued that if the brothels were not disorderly and a nuisance then they should be allowed to remain (LT, March 22nd, 1871), and the charge against one of the prostitutes arrested in a brothel raid in 1870 was dropped when evidence was produced showing her to be of "quiet behaviour" (LT, August 5th, 1870). Similarly in 1894, three women charged with keeping disorderly houses were shown leniency to the stated extent of having their cases treated as if they were first offences explicitly because the houses had not been prosecuted against specifically for being public nuisances (LT, November 20th, 1894).

An interesting contrast is provided in the relative severity of the sentences imposed on Margaret Bowen, a woman of known "ill-repute". She received only one week's imprisonment for brothel keeping (LT, February 18th, 1870), but when she was charged with indecent behaviour in a public thoroughfare, was put away for three months (LT, August 16th, 1870). Thus it was not necessarily being a prostitute or keeping a brothel which were sanctioned against, but affronting public decency by engaging in such pursuits in a manner seen as forcing respectable people to become cognisant of the fact of their existence.

In 1892 and 1893 Police Registers of Prostitutes provide further insightful information on this theme. The Christchurch Inspector submitted a list to the Commissioner of Police in Wellington in January, 1893, prefaced by the following:

Sir, In Compliance with the Instructions contained in Circular No. 13 of the 28th September 1891, I have the honour to forward herewith a Return of the Brothels in this District, all of which are conducted in an orderly manner, and every care is taken to avoid offending public decency.

On the list were 142 names of prostitutes, 109 of whom were designated as "quiet" compared with 33 who were termed "rowdy". Indications as to the number who had never been convicted of an offence showed 43 of the quiet and only 2 of the rowdy to fall into this category. Thus approximately two-thirds of the total women on the register had been convicted of a criminal offence, but a far greater proportion of those considered to be rowdy ended up with convictions than those who conducted themselves more quietly.

The Register of Brothels submitted a year later contains slightly fewer names (121) and designates the women into three rather than two categories. Thus 83 women were termed quiet, 9 rowdy, and 29 deemed to act "indifferently", a sort of middle-ground between the earlier two extremes. The connection between those prostitutes who are noisy and offensive in public and those who are arrested and convicted becomes even more apparent, for most of the quiet prostitutes (67, or 80.7 per cent) have no recent convictions, compared with only approximately one-quarter (8 or 27.6 per cent) of those who act indifferently. However, none of the "rowdies" managed to escape arrest, conviction and probably imprisonment.

This return shows there to be 13 houses organised with two or more prostitutes in each, but by far the majority live alone or with a husband or male companion, or in two cases with their parents. The largest brothel,

Abbey Villa, situated on the South Belt, contained six women, and it was stated that,

No complaints have been made and no convictions recorded against any of the inmates. This house is frequented by respectable men.

One other brothel was also specifically said to be frequented by presumably Canterbury's male gentry, and again no complaints had been made or convictions recorded against its inhabitants. Other houses said to be run indifferently had their clientele characterised on occasion as "a low class of men", or were described as "a resort of spielers", while several houses were termed "houses of assignation".

The view held of some of the women, and probably underlying their often high rate of repeated arrest, conviction and imprisonment, is reflected in such statements as "A low drunken prostitute - never remains long in one house", or, "A low prostitute - has been repeatedly convicted of drunkenness and obscene language and has been ordered to leave other houses she occupied", or, "Has no fixed abode - almost continually in gaol for drunkenness and indecency". What emerges is an even clearer picture of both the condoning of quiet, well-behaved prostitutes, mixed with a certain ambivalence towards those who are usually quiet but sometimes more obtrusive, and culminating in almost total condemnation of those women whose lifestyles were characterised by excessive use of alcohol, transient residency, and so forth. The register's collective comment on eight women of no fixed abode, all of whom had been active prostitutes but were now ageing, summarises the sentiment well:

These women are old drunken hags, have no fixed residence but camp out at night in frequent low brothels.

Mention of houses frequented by respectable men raises an interesting issue which unfortunately has been little documented. The lack of information is understandable given that persons of privilege can generally afford or command the added "privilege" of having their private lives protected from scrutiny, but the scant available material suggests that prostitution was not solely confined to working-class men paying working-class women for sex. The different sexual ethos of the working class and the fact that members of this class were often less pre-occupied with respectability meant that pre-marital and possibly also extra-marital sex was condoned in a way which rendered resort to prostitutes often unnecessary. However, for those single men whose daily lives may not have included much mingling of the sexes (such as the gold rush men, infantry, sailors, and so on), prostitutes undoubtedly provided a welcome service. But it seems reasonable also to suggest that such a service may have been gladly received by middle class men as well (especially those whose wives subscribed to the ideology of passionlessness, or who deemed sex to be for procreative purposes only). There may also have been upper class demands for prostitution services, although financially the latter were in a position where they could either afford to keep a regular mistress, or negotiate (or acquire by force) sexual access to their servant girls.¹¹

While only a few brothels catering for respectable men were listed in Christchurch, one would expect there to be only a few given the predominantly working class nature of the population. Also, to be a brothel

¹¹ In 1869 Doctor James Turnbull was to state:

I once had a gentleman apply to me to examine his servant, I asked why do you wish me to do so. Because I am accused of improper conduct with her, and your evidence as to the existence of a hymen would effectively rebut the accusation. But, I asked in professional amazement, you would not stake your reputation upon the existence of that in a servant?

serving the respectables necessitated being a discreet brothel since few of the clientele wanted their patronage of such places known. Once a brothel became known for its discretion over such things it would likely attract "respectable" patronage, but it could also be the case that if gentlemen paid them higher prices than the women in such houses could afford to keep a low profile - for example, by not having to solicit in bars or on the street. The security of a regular, high-paying clientele could thus protect the women to some extent from police surveillance and arrest, while simultaneously protecting the social reputation of their customers. It was emphasised in Christchurch in 1868 that

several brothels in our midst are the property of so-called respectable persons, who would rather shut their houses than be exposed to the world as owners of brothels. They have no objection to receive the wages of sin and shame in the form of rent, so long as it is not published to the world.

(Press, February 25th, 1868).¹²

Thus it is possible that the situation here may have been similar to that in the United States in the latter nineteenth century:

Women were arrested during this period but they were, by the vast majority, the streetwalkers, old, alcoholic, deformed, part-time, or new in the business, unable or unwilling to work within the security of a house, they were arrested when they came into conflict with the 'solicitation and public nuisance' clause. Hanging around a street corner, yelling obscenities, fighting over a customer, forcing attentions on a gentlemen were all grounds for arrest. Brothel girls were rarely bothered.

(Holmes, 1972, p. 85).

¹² One such brothel owner, a man by the name of Goss, was listed in the 1869 Police Register as the landlord of two Christchurch brothels. He did not admit to such ownership, however, when that same year he complained to the Social Evil Committee about the moral dangers of prostitution! (Le 1/1869/12; Eldred-Grigg, pers. comm. 1983).

For further evidence of patronage of brothels by respectable men refer to Lotti Wilmot's accounts from the early 1880s - New Zealand Beds and Beds I have Known.

The women who appeared most frequently in the court records and reports were almost atypical of prostitutes in general, for essentially they constituted a small group who were particularly vulnerable to arrest either as a result of being vagrant and/or alcoholic, and whose public profile and definition as a nuisance element incurred wrath and ostracism from other sectors of the community.

Thus whereas comparatively few women in nineteenth century Canterbury were ever imprisoned, these rowdy, habitual offenders seemingly had their lives under almost constant police surveillance.

As women offenders they stood out partly because they were women and automatically "exceptional", but also because the nature of their offences brought their whole lives under scrutiny in a way that was virtually all-encompassing. Male recidivism rates arose from repeated criminal offences, but for women they derived from repeated prosecutions of their way of life.¹³ As Macdonald points out:

Many of the habitual women criminals did not have any legitimate employment, a permanent abode or a stable relationship; all of which were considered necessary for a respectable existence.

(Macdonald, 1977, pp. 13-14).

Essentially these were the women whose lives came most easily under public scrutiny, as well as most readily under public condemnation. Prostitutes were dangerous - their existence was seen as threatening the moral fabric of society. They were in fact seen as constituting

13 Consistent with the view that it was essentially female morality rather than criminality which was being policed is the fact that these women had a higher recidivism rate than their male counterparts - thus in 1890 approximately 85 per cent of female prisoners compared with only 55 per cent of male prisoners had three or more convictions recorded against them (Macdonald, 1977, p. 17).

a distinct menace to the health and morality of the community. Each of these women is a plague-spot in their neighbourhood, and from them vice spreads throughout the district, often beginning with their own daughters.

(AJHR, 1907, Vol. 4, H-20, p. 5)

THE POLICING OF PROSTITUTES

The policing of prostitutes' lives resulted in prosecutions being laid against them for a variety of offences, often with actual soliciting or brothel-keeping charges being comparatively few in number. It was easier to secure convictions for breaches of the vagrancy law than for soliciting or breaching the Contagious Diseases Act, for, as the 1898 Royal Commission on the Police pointed out,

As those who can give evidence of the acts of prostitution necessary to constitute a brothel are, for obvious reasons, reluctant to do so, the police have to rely on indirect testimony, and experience difficulty in obtaining convictions.

(AJHR, Vol. 3, H-2, p. xxv, 1898).

Trying to book women on the charges led to their criminal career histories characteristically including (as well as vagrancy and soliciting) convictions for drunkenness, indecent conduct, breach of the peace, and possibly theft or assault.

Essentially what was being condemned was the way in which their lives threatened conventional mores. These women did not live lives of quiet domesticity behind closed doors; they were not dependent on and subservient to one male head of the household; they were not pliable creatures submitting politely to situations and conditions repugnant to them. Instead they confronted through the day-to-day patterns of their lives all that was presented as the norm of idealised womanhood in Canterbury, and in so doing caused affront to those who modelled themselves as paragons

of Victorian respectability. A richer impression of the lives of these women may emerge if we consider a few of them individually, using whatever information can be gleaned from newspapers, court records, and police gazettes about each.

Ellen Parkinson, (alias Parkson, alias Danby) was born in Ireland in 1850 and came to Canterbury in one of the first four ships. She appears in the 1869 Register of Prostitutes as a Mrs Parkinson living alone in Durham Street, and from then on she had frequent appearances in court on drunkenness and vagrancy charges only some of which we shall consider in detail. In 1883 she and Minnie Bench were charged with larceny, but this was dropped by the police in favour of pressing for a vagrancy charge. The arrest of these women occurred on the premises of Henry Birmingham's house on the South town belt, described as being ostensibly a vegetable shop but in reality operating as

a sort of head quarters for thieves and vagabonds
and a place to which drunken men were taken and
robbed.

(LT, June 13th, 1883).

Both women said they were willing to go to the Female Refuge, but when their application for admission failed they asked for three days in which to leave town. Inspector Pender advised that

This was perhaps the best thing the women could
do as they were too well known in Christchurch
to do any good for themselves here.

(LT, June 15th, 1883)

Three weeks later Ellen was charged along with Elizabeth Leatherby with being drunk and fighting in a public place. The Lyttelton Times reported that

From the evidence it appeared that Parkson had
beaten the other woman most unmercifully and
seriously bruised her, without provocation.
Parkson was sent to gaol for three months as a
vagrant, and Leatherby fined 10s. for drunkenness.

(LT, July 6th, 1883)

Within little over a week of her release from gaol on this charge, Ellen was accused, along with James Kedge (alias Cockney Jim), Frank Le Mesurier and Annie Williams, with violent assault on John Grant in a Madras Street brothel. The complainant had been very intoxicated and could remember few details of the attack, although he did comment that he

Had long whiskers when he went to the house,
but had short ones now, and supposed they had
been pulled out.

(LT, October 18th, 1883)

Testimony from neighbours proved the savagery of the attack. Ellen and the two men were sentenced to two months imprisonment with hard labour each and Annie Williams one month, with the reason for the disparity seeming to be that she was not as well known to the police as the others (ibid.). Ellen Parkinson was convicted and imprisoned on fighting, vagrancy and drunkenness sentences throughout the rest of the century, and with stealing an overcoat in 1897. The 1893 Police Register of Prostitutes indicated her to be one of the "rowdy" women in town, of no fixed abode, and it remarked of her life overall that she was "a notorious thief and generally in gaol".

Isabella Leckie, born in Manchester in 1853, seemingly made one of her first court appearances in Christchurch in March 1877, when along with four other women she was arrested in a house of ill-fame ("the resort of prostitutes and thieves") and charged with vagrancy. That this was one of her first convictions was substantiated by the fact that she was imprisoned for three months compared with the others' six (LT, March 14th, 1877). By June 15th she faced a charge of being drunk and soliciting, for which she received only a fine after pleading to having just come out of gaol (LT, June 16th, 1877). Three weeks later she was arrested for being drunk and disorderly outside the Theatre in Gloucester Street, and was reported as

having "again made profuse promises of amendment" (LT, July 5th, 1877). It was only another three weeks before Isabella was charged with drunkenness again, and described as "having been in such a state as to require the attendance of the divisional surgeon" (LT, August 1st, 1877). It was also stated that Isabella had now appeared in court ten times in the last ten months, and she was sentenced to twelve months imprisonment with hard labour.

The pattern of her life continued in such a way that by 1883 she had 45 convictions against her name. That year she was again accused of having been drunk and soliciting in a public street, and in court

admitted that she 'had had a little but was not drunk, your Worship', and was extremely vituperative of the police, who she declared 'would not give a woman a chance to pick herself up'.

(LT, November 23rd, 1883)

At this point the Bench reminded Isabella that it was only a few days since the charge against her had been dropped on the basis of a police recommendation that she be released into the care of the Salvation Army, but her obvious unwillingness to avail herself of this offer meant that she would now be imprisoned for a further three months. In court on January 4th, 1888, Isabella "begged hard for a fresh start for the New Year and was let off with a fine of 5s. and 1s. cab hire" on yet another drunkenness charge (LT, January 10th, 1888). Three years later Isabella was recorded as having 92 convictions for drunkenness, and she stated in court in relation to a further charge that

she had very little to drink, but what she had made her quite mad. She thought it a shame that publicans should be allowed to sell such stuff.

(LT, January 15th, 1891)

No doubt trying to refute the police's image of her as a prostitute, Isabella also pleaded

that she was a married woman and lived with her husband, only she went out and took a drop of drink.¹⁴

The police complained that Isabella had destroyed two blankets while detained in the lock-up, and inevitably another three month gaol sentence was imposed.

The following year she "begged hard for a last chance" and was fined 5s. (LT, January 19th, 1892), but it was later pointed out that her fine would have to be paid out of the Salvation Army Reserve Funds. Isabella was then discharged on the grounds that she promised to attend to the regulations of the Rescue Home.

She went away with a Hallelujah lassie, but the police were informed during yesterday that the management of the Home, after doing their best, had found her beyond control, and she had left the Home, defying them. She was subsequently found by the police in a helpless state of drunkenness, and locked up. There were 110 previous convictions against her, and the Bench sentenced her to fourteen days imprisonment.

(Star, January 19th, 1892).

Isabella's court appearances continued, and in 1897 Adjutant Bishop begged that she be released to the Salvation Army Home for as yet she had never actually stayed there but now expressed the desire to do so. Mr. Beetham, R.M., hesitated, but persuaded by Bishop that "while there's life there's hope" decided to give her the chance (LT, September 20th 1897). Ten days later Isabella was back in court....

14 However, she was listed in the 1893 Police Return of Brothels as a 'rowdy' prostitute who lived with a tailor named North, and while there were no complaints against his house in Gloucester Street, Isabella had been convicted of larceny and repeated drunkenness and was "nearly always in gaol".

Another familiar face in the Christchurch courtrooms was Mary Ann Greaves, born in Leicestershire in 1834 and who had come to New Zealand from Tasmania (possibly having been sent there as a convict initially). By 1866 Mary Ann was already being described as "an old offender" and making repeated court appearances on drunkenness, disorderly behaviour, and obscene language charges (e.g. Press, February 19th, March 20th, March 23rd and so on, 1866), while later that year she was convicted, along with Mary Holmes and Charles Yates, of assault and robbery on Thomas Davis and sentenced to two years imprisonment (Press, September 5th, 1866).

In 1869 Mary Ann had gone outside the Criterion Hotel with a man she had met there and while engaged in other matters had allegedly rifled his pockets. When he accused her of theft she called him a liar and struck him across the head. She was, however, found guilty by a Supreme Court jury, and His Honour admonished her as follows:

It is quite evident upon the facts that you are an old and hardened offender. I am sorry to say that both the Magistrate and I know you too well.

(LT, September 4th, 1869)

Accordingly Mary Ann received a further two year prison term, with the Register of Brothels compiled later that year listing her as one of the four prostitutes currently detained in Christchurch Gaol (ICPS, 835/69). Mary Ann was released from gaol at 4pm one Saturday afternoon in May, 1871, but by that evening had been arrested again for drunkenness and soliciting prostitution in Gloucester Street and she returned inside for a further month (LT, May 23rd, 1871). She was subsequently to face repeated convictions and terms of imprisonment for drunkenness, soliciting, vagrancy, and larceny.

In 1872 Mary Ann promised to leave town after she had been arrested for soliciting in the presence of a group of men outside the Mitre Hotel (LT, March 14th, 1872), but when she failed to do so was labelled "incorrigible" and again returned to gaol (LT, March 19th, 1872). The convictions continued, and in 1881, while in court on an obscene language charge, the arresting constable was said to have given

the woman a very bad character, stating that she was often found following drunken men, and was a bad woman. The Bench remarked that it was useless to deal leniently with the defendant.

(LT, February 24th, 1881)

and Mary Ann was again sentenced. The charges against her expanded to include breaches of the Contagious Diseases Act, fighting in the streets (with Ellen Parkinson in 1887), and being a rogue and vagabond. By 1892 Mary Ann had seemingly settled down, being described on the Police Register of Brothels as "quiet", and living in Sydenham where she kept "a notorious thief". Mary Ann's daughter, Catherine, born in Tasmania, was charged with committing a breach of the peace in Christchurch in 1866 when she was 14 years old and from then on was also frequently convicted and imprisoned on theft and prostitution charges.

Another woman with an interesting criminal career was Bridget Ferrick, born in Ireland in 1841, and who in 1866 was described in court as a prostitute and a vagrant and charged with assault on her child (Press, May 12th, 1866). She was remanded for medical inspection to ascertain her state of mind, and following her release was arrested later that same year for vagrancy. Bridget's sister offered to take charge of her, so the Magistrate dismissed the case but "cautioned her that if she still insisted in staying out at nights he should have to send her to gaol" (Press October 31st, 1866).

The following year she was charged with larceny but sent to the lunatic asylum, since His Worship did not consider her to be responsible for her actions (LT, May 28th, 1867).

Two years later Bridget's sanity was still being debated, and the medical evidence produced indicated

that accused was not out of her mind, but at the same time she should not be allowed to go at large. The abandoned life she had been leading was the cause of her being in the state she was in at present.

(Press, September 25th, 1869)

Being now considered more bad than mad, the Magistrate committed her to gaol as a vagrant for three months. Despite this, the following year Bridget was again placed in the asylum at Sunnyside, but escaped and was subsequently charged with indecent conduct. The Asylum Superintendent, Mr. Seager (formerly the Lyttelton Gaoler), "characterised her as a most wicked woman, but perfectly sane", and said she had been about to be discharged when she escaped (LT, August 18th, 1870). In court her behaviour was termed very objectionable, and the Magistrate admitted it to be a very "difficult matter to draw the line as to whether she was merely a bad character or insane" (ibid.).

Eventually, Bridget was returned to the Asylum, but escaped again, and so it seems to have continued until later in the 1870s when increasingly she appeared in court on drunkenness and vagrancy charges. In 1875 her husband Anthony was charged with neglecting to pay towards the support of their four children in the Industrial School (LT, March 27th, 1875), while in 1881 daughter Ann, deserted by her father and left in the care of a Mrs Ching Chong, was committed to Burnham (LT, July 28th, 1881). By the 1880s both Bridget and Anthony were appearing separately in the courts on vagrancy charges, and in 1883 it was said of Bridget that

The accused - an old woman - who had been living a vagrant life for the past 15 or 16 years - had gone to the police depot last night and given herself up.

(LT, October 23rd, 1883)

Confirmed now to be "bad", she was sentenced to a further six months imprisonment.

Responses to women such as these included the obvious ones of abuse and arrest, as well as repeated efforts to keep them isolated in prison and in effect quarantining them as a moral health hazard. Annie Swift arrived in Canterbury in the Lancashire Witch in 1867 and began appearing repeatedly in the courtrooms, very soon earning herself the reputation of being "a bad importation" to the province (LT, October 15th, 1867).

After appearing on her sixth charge in four months

She was committed to prison for six months as a vagrant, in order that she might be kept off the streets.

(LT, December 19th, 1867)

There was also a distinct readiness to use any opportunity to imprison these women for longer periods than what was allowed for by the Vagrancy Act. Thus when Minnie Thompson was convicted of larceny of a purse in 1880, the judge stressed how she had had 25 previous convictions in the past ten years (for obscene language, brothel-keeping, and so on), and then gave her a sentence of four years penal servitude (LT, January 6th, 1880).

There was also a tendency by the magistracy to try to purge the province of "abandoned women" altogether. Instead of periodic bouts of detention in gaol to remove them temporarily from the streets of Christchurch, it was hoped to be able to induce them to leave town altogether by making informal contracts with them in the courtroom.

However, the women's promises to leave town in exchange for court leniency seldom eventuated (e.g. LT, April 7th, April 24th, 1877; August 14th, December 6th, 1897). Ellen Talbot made fervent avowals to "clear out and amend her mode of life" (LT, February 11th, 1870), but when she was arrested yet again for drunkenness, the court report carried the following indictment:

Ellen Talbot, who on the previous day had produced a certificate to show that she had become a total abstainer, was charged with being so helplessly drunk in Gloucester Street that assistance had to be procured to carry her to the station. As chance after chance to go away had been given her, His Worship sentenced her to 12 months imprisonment with hard labour.

(LT, May 13th, 1877).

Probably the woman who most frustrated the magistracy with her promises to leave town, however, was Ellen Mitchell, who had "purchased railway tickets to take her up country on ten occasions, and each time had been prevented from using them by her giving way to drunkenness" (LT, July 10th, 1883)

Apart from banishment, an alternative response for handling these women lay in efforts to reform and reclaim them. At the height of the debate on the "Social Evil" in 1867 a clergyman wrote to the Lyttelton Times complaining that presenting "degraded women" with the Gospel was not alone sufficient to restore them to a virtuous life, for the real problem lay in providing them with the means to obtain a respectable livelihood. He wrote:

The common answer that we receive from these women is something of this sort. 'We know that what you tell us is true - we are leading a miserable life, and we have no ground of hope for the future, we detest the life, and would gladly exchange it for one of purity and honesty, but what are we to do? Everyone knows us. We cannot obtain situations, the refuge will not hold us, and we MUST LIVE. It is all very well to talk about the Bible, but that is not meat and drink'. And, indeed, this is the stern truth.

(LT, November 15th, 1867)

However, beyond a certain point very little help was offered to prostitutes by a society convinced of their depravity and debauchery. It was even difficult for them to keep their own money or their children - the protection of both was a right earned with respectability.

Thus when Martha Rhodes applied for an order to protect her earnings from her husband it was refused 'as applicant is living in a house of ill-fame' (LT, August 2nd, 1875), and women living as prostitutes, or even just "promiscuously", often had their children taken away and placed in Burnham Industrial School (e.g. LT, March 29th, 31st, 1875; June 10th, 1869; August 27th, 1881; July 9th, 1889; February 5th, November 20th, 1891; June 2nd, 1892). Indeed there were some in Canterbury who felt that the more penalties imposed on prostitutes the better - a letter to the Press in 1868 urged:

If pimps, panders, and prostitutes were informed before landing on these shores that a severe horsewhipping at the cat's tail, and a term of imprisonment with hard labour awaited them if discovered plying their abominable trade, they would give the colony a wide berth, and we should be rid of the social pest.

(Press, February 21st, 1868)

But while some advocated prevention, others proposed cure, and suggested reforming those who were "reformable". It was therefore, urged that houses of refuge be reserved only for those who sincerely wanted to leave their former lives of degradation behind (LT, November 18th, 22nd, 26th, 1867). For some women deemed incorrigible this meant there was nowhere for them to go - as, for example, when Ellen Parkinson and Minnie Bench were refused admission to the Refuge in 1883 (LT, June 16th, 1883).

The paucity of "charitable aid" services in the nineteenth century has been well documented elsewhere (Sutch, 1973; Tennant, 1979), although some improvements were made following the Hospitals and Charitable Institutions Act of 1885 (Eldred-Grigg, 1982, p. 115). Causing particular

concern to many were the alcoholic women and prostitutes who received repeated terms of imprisonment but little in the way of attempts at their reformation -

A woman is found in the street drunk and disorderly, or she is charged as a vagrant, having no visible means of earning a lawful livelihood or she has committed some petty depradation, such as picking the pocket of a drunken man, or inveigling him into some not over-respectable lodging house, and for the tenth or fifteenth or twentieth time she is gent to gaol, it may be for a month or for twelve months, just according to the offence or the views the presiding justices may take of it when the charge is brought before them and proved by the evidence of the police.

(LT, July 6th, 1875)

Prostitution and alcohol were often linked as twin evils, and it was argued by some that prostitutes "could endure such a life only by drowning themselves in drink" (Windschuttle, 1979, p.17). Public houses became important to prostitutes as arenas for pick-ups but the women themselves were also important to the publicans since their presence, like that of barmaids, attracted clientele. Yet the condemnation often expressed of female drunkenness reflected the same double standard we have already seen manifest in the different attitudes held about male and female "immorality". While drunkenness might be condemned in both sexes, it was nevertheless seen as more bestial in a woman, to the extent even of "unsexing" her. Colonial temperance magazines expressed impassioned horror at how alcohol addiction could transform a decent, pure woman into "a fury and a prostitute" (Temperance Advocate, 1841, quoted *ibid.*) and stated emphatically (if not fanatically)

There is nothing in the whole catalogue of crime so thoroughly revolting as drunkenness in a woman; there is no object of disgust or horror that offends the sight of God or man, so entirely loathsome as a drunken woman.

(Temperance Advocate, quoted in Windschuttle, 1979, p. 18).

In Christchurch in 1882 concern was expressed over the "deplorable" state of "feminine drunkenness with its attendant evils" in the city, and it was claimed by a visitor

That in no other city did he see so many girls entering the bars of public houses as can be seen almost every night within a few yards of the Theatre.

(LT, April 15th, 1882).

Again the nuisance element was stressed, and the suggested remedies included compiling police registers of those women who frequently patronised public houses and whose occupations were "well-known" accompanied by "agitation as will compel publicans to refrain from selling drink to females" (ibid.).

The women whose drunkenness received the most social censure, however, were the older alcoholic (and often prostitute) women. Frequently they were mocked for their inebriated state (e.g. LT, April 20th, 1882; January 10th, 1888; August 19th, 1897), but if respectably attired they could still meet with leniency. Such a woman wandered into a lodging-house in Timaru where she fell into a deep but noisy sleep on the bed of a "gallant Volunteer" who was expected to return soon for his dinner.

Finally, the police were sent for, the door opened, and the sleeping beauty led forth, being gently conducted to the footpath, she fell on the earth murmuring 'Praise the Lord'. Then the police officers summarily hoisted her in mid air, and bore her aloft like a trophy, she screaming, scratching, kicking and biting as hard as she could. She was got in at last however, and on Tuesday morning made her bow to the 'beak', who, with commendable mercy, let her off with a caution.

(LT, April 20th, 1887).

It was more typical, however, to denigrate alcoholic women as "old drunken hags" (as on the 1893 Police Register of Brothels),¹⁴ and to

¹⁴ Robyn Anderson notes that in Auckland up until 1845, when Lady Fitzroy complained, women drunkards had been sentenced to sit for three to six hours in the stocks, during which time they were undoubtedly publicly humiliated and insulted (Anderson, 1981, p. 11).

call for their confinement in places free from the temptations of drink. Early in 1895 Eveline Cunnington, a socialist reformer and a regular visitor to the Lyttelton Gaol, wrote of such women:

I perceive that while they are in gaol they are well looked after, well fed, well employed; their whole mental condition improves; some of them are splendid workers, and bustle happily about with the broom and tub, or needle and thread. They come out; they immediately get drunk; become filthy, besotted, degraded. Is it then to be wondered at if I say keep these silly old dames shut up?

(LT, January 21st, 1895).

The absence of "compulsory retirement" for inebriate women meant that they could then wander about town causing great "moral and physical mischief" and could also damage themselves, as in the case of Emily Pike who had drowned while drunk in the Avon a few weeks previously.¹⁵ Eveline Cunnington had previously recommended such destitute old women to homes such as the Magdala, St. Mary's or the Salvation Army, even though normally these places had only been able to care for them a few days before they left to go back on the streets. Now, however, such institutions refused to take them back since they had no power to keep them there, and the safest place for them remained the gaol (ibid.).

In 1896 five "destitute old women" (Margaret Ellison, Sarah Smith, Clara Dodsworth, Ellen Thompson and Honora Setter) were all brought before the Bench on the same day charged with drunkenness and vagrancy after having been arrested in Manchester Street, by then said to be one of the

15 Emily Pike was not the only woman to drown while intoxicated in the river. Several prostitutes died in this manner also e.g. Catherine Boyle in 1877, Margaret Thompson in 1891, and Mary Moxham in 1899. (Lamb, 1981, pp. 176-177).

favourite haunts of "women of this class".¹⁶ The Magistrate expressed doubts as to the efficacy of gaol sentences for such women, but justified imprisoning them given that in the absence of any other place he was really doing them a kindness by sending them back there (LT, April 25th, 1896).

However, more and more agitation was being expressed at the ridiculous number of prison terms being imposed on such women, and in 1897 Eveline Cunningham was prompted to write to the police in Auckland asking for particulars of the largest number of convictions recorded against any female offender in their district. On learning that one woman had been convicted 170 times, 111 of which were for drunkenness and 37 for vagrancy (LT, August 14th, 1897), she wrote to the Lyttelton Times condemning "the disgraceful tramping of wretched inebriates backwards and forwards to the gaols one hundred and seventy times" and declaring that

These foolish women...have become so well-known in the Court that they are 'a mere joke' to onlookers and a source of low merriment to some of our larrikin classes. These women need our protection, and they should receive from an intelligent State a firm and efficient treatment.

(LT, August 19th, 1897).

Largely as the result of the promptings of Bishop Julius, the Anglican Church responded to the "Army of the Indigent" in Christchurch by establishing a Samaritan Home in 1897. It was located in the spartan surroundings of the Addington Gaol, and intended especially for women of bad character - this was partially assessed by their previous convictions

16 The prosecution of four other prostitutes on similar charges earlier that year had prompted the police to state in court "that complaints had been made of these women frequenting Manchester Street and annoying both shop-keepers and passers-by. Constable Ramsay stated that one night last week he counted in Manchester Street, twenty-seven prostitutes of the lowest class." (LT, January 14th, 1896).

and whether they had a second illegitimate child. Police Inspector Broham claimed that

the establishment of the Samaritan Home has relieved the town of a large number of drunken old women who paraded the streets at night and were usually found by the police sleeping upon door-steps, or in deserted houses, or in water-closets. When brought before the Bench for vagrancy they always complained that they had no place to go and no one to relieve them. This they can no longer do: they are mostly to be found in the Home now, and it is to be hoped the streets will see them no more.

(AJHR, 1897, Vol. 3, H-16, p.6).

GRADES OF DEGRADATION

Prostitutes and old drunken hags - these were the women who aroused the most concern in nineteenth century Canterbury. Yet the response to these groups differed in the sense that while the older "abandoned" and alcoholic women were seen as beyond redemption, hopes were often expressed of the possible "saving" of younger girls from lives of vice and sin. Recalling Summers' typifications again, we could perhaps declare now that there was a "damned whore" category, but this category did not comprise all criminal/immoral women - it was reserved for that small minority of women whose lives were characterised by vagrancy, prostitution and drunkenness, lives which very perceptibly attracted a high degree of police surveillance and intervention.

From this basis we can construct an essentially three-fold schema of the layers of badness perceived in nineteenth century Canterbury women. Those women perceived as "abandoned wretches" would constitute the Forsaken Floras. They were the women focussed on in this chapter, who were often perceived as having sunk too deep into degradation to be reclaimed by the Salvation Army's "hallelujah lassies". The legal presumption which

operated to "protect" respectable women from harsh sentences was not evident in the sentencing of these women. For example, several cases involving rowdy brothels resulted in both men and women being brought before the courts, but whereas it was often proved by the evidence that it was the men present who had created the disturbance, invariably it was the women who were punished the hardest. Forsaken Floras could spend half their lives going in and out of gaol, and the more they became known to the police and Magistrates, the longer and more frequent the sentences they could expect to receive for their "crimes".

A second group of women, whom we could term the Hopeful Hetty's, comprised occasional offenders who hoped to be able to get away with the odd misdemeanour and were regarded with a certain degree of optimism by the sentencing and saving agencies. Usually, they would be convicted of petty theft or false pretences, or would appear on the occasional drunkenness, vagrancy, or prostitution charge, but not frequently enough to be deemed totally depraved or robbed of all respectability. Women in this category tended to receive more constant and predictable sentencing, being regarded as those who should be censured for their crimes but not lost forever because of them. Often theirs were the cases which placed judges and magistrates in a quandary as to how to imprison them so as to best avoid the risk of contamination by the Forsaken Floras.

The third group of offenders could be termed Big Time Bertha's, women who had never been indicted on any other charge but whose first and usually only Court appearance followed their having committed one of the more

17 Thus in 1870 two males fighting in a brothel were fined 10s. and 40s. respectively while the women present in the house were each sentenced to a month's imprisonment with hard labour (LT, January 14th, 1870).

serious or even capital offences, such as concealment of birth, murder or manslaughter. Characteristically these women often seemed to be able to sway the Judge to sympathy, and to receive sentences which were remarkably lenient compared with the nature of the offence committed. At times this was due in part to a perception of the crimes they committed as being too much out of (female) character to be regarded as intentional, wilful acts. The frailty of the fair sex did not easily allow for them to be identified as the cold-blooded killers of the husbands and children to whom they were supposed to be so passionately and passively devoted - even if not insane, they could hardly be responsible, and hence punishable, for their action.

Katherine Kelly was charged that she "feloniously did kill and slay one Thomas Kelly", her husband, in August 1886. Evidence was given by a neighbour's daughter that he had arrived home and banged on the door, whereupon Katherine had come out and thrown him along the verandah with sufficient force that he had fallen hard down the steep steps. Consistent with this, the inquest revealed Thomas Kelly to have died from a serious "spinal injury", and the jury agreed as to Katherine's guilt but made a very strong recommendation for mercy. His Honour remarked that

He had no doubt that the accused had had no intention of taking her husband's life, and that the painful result of her violence had been an accident. He would pass a sentence that would be virtually a discharge, viz - one day's imprisonment; and as this counted from the opening of the Court, she could now go.

(LT, October 6th, 1886).

At other times, the Courts might find such offenders insane as we saw in Chapter 4, or might choose to completely discharge them - even in the light of apparently damning evidence. In 1859 Christina Gregg was charged with the murder of her husband, and evidence given in court revealed her to have been on bad terms with him for a long time, to have often

complained about his drunken squandering of money, to their frequent fighting, and to her now being pregnant to Edmund, the servant, and terrified of her husband's discovering the fact. The inquest revealed that James Gregg died from poisoning by arsenic, but there was obvious reluctance to condemn his wife. Doubt was thrown on much of the witnesses' evidence because they were

mostly women, whose casual exchanges with
the accused had now assumed momentous
importance in the courtroom,

and it was also suggested that maybe James Gregg had taken the poison himself even though such a claim could not be supported by evidence. The female prisoner was declared not guilty and discharged (LT, December 7th, 1859).

Thus it seems that the image held of the woman on trial was often far more influential on her treatment by the Court than any consideration of the nature of the offence she had committed. A prostitute was more likely to receive a longer sentence for drunkenness than at times another woman would receive for manslaughter, and the underlying ethos almost seems to have been to keep the utterly abandoned utterly confined, and utterly segregated from anybody they could contaminate, with the result being a rather inverse sentencing pattern!

Overall, therefore, it seems that there were levels of degradation through which women could sink - thus by no means can it be argued of nineteenth century Canterbury either that all criminal women were seen as helpless victims deserving leniency, or that all female offenders were perceived and treated as damned whores.

The perception of a small group of typically vagrant, alcoholic prostitutes as "Forsaken Floras" in part evidences the operation of the double standard of morality. As we have seen, both promiscuity and drunkenness were tolerated much more readily in men than in women, and the most heinous public order offences for men seemed to be vagrancy and living on the earnings of prostitution. These two offences challenged the dominant male work ethic which demanded of men that they be producers rather than consumers. Male vagrancy may, however, have seemed more consistent with the often mobile and transient lifestyle of working class men and thus at times was not condemned as strongly in men as in women¹⁸ (e.g. LT, March 5th, 1881; November 24th, 1887). For a man to live on the earnings of prostitution, however, was seen as utterly deplorable more for the immorality of the supporter/dependent role reversal than for the immorality of being involved in prostitution per se.¹⁹ (e.g. LT, December 11th, 1867; February 25th, 1870; January 28th, 1892). The most public scorn and court condemnation however (as well as the most concerted reform efforts), were reserved for those women whose lives strayed too far from the paths of virtue and respectability. Vagrancy, prostitution, and alcoholism were much more at variance with "feminine" rather than "masculine" behavioural norms - hence deviation in women appeared that much more aberrant and contemptible.

18 Vagrancy in either sex, however, was obviously repugnant to the purity crusaders of the 1890s. A letter to the Lyttelton Times in 1897 supported the notion of public abattoirs for vagrants, and stated that "every old, middle aged or young man or woman having no lawful visible or invisible means of support could be quietly knocked on the head or shot" (LT, July 30th, 1897).

19 The mode of life whereby a husband was supported by his wife's prostitution earnings was characterised as "the most disgraceful a man could possibly adopt" (LT, February 25th, 1870).

THE DOUBLE STANDARD OF MORALITY

Nineteenth century attitudes towards prostitution and the operation of the double standard of morality become more readily understandable once they are located within the wider context of Victorian sexual ideology, an ideology essentially bourgeois and British in origin but widely promulgated in all Britain's colonies also. As Michael Pearson has written:

It was a strange society that worshipped the inherent 'purity' of women while accommodating the inherent 'evil' of men. It believed that, since the modesty of ladies must be protected, natural male lusts should be served by the poor, who supplied most of the other basic needs of the middle and upper classes.

(Pearson, 1972, p. 12)

The significance of sex as a saleable commodity was by no means restricted to the prostitution arena, however. A high premium was attached to feminine purity in a society characterised by burgeoning capitalist interests and anxious to safeguard the hereditary transmission of property, and as we have already seen in the material on coverture in Chapter 4, women themselves were viewed as chattels to be acquired and owned by men.

Marriage was viewed as virtually obligatory for women in the nineteenth century, with young girls being carefully raised and cultivated for the purpose of making a suitable "match". Marriage was also much more binding on the woman, who surrendered her name, her property, and her freedom to her husband. Thus

If she were disloyal to her marriage vows, if she committed adultery, no matter what her provocation or the purity of her new attachment, her social ruin was certain: she would be barred from her home and children, rejected by her own family and friends; without a character she would be in a much worse position than even the spinster, not only totally and irredeemably ostracized but unemployable in any respectable occupation; common prostitution might very well offer her her only possibility of survival. Her

husband, on the other hand, could expect indulgence for any infidelities he might practice. And his claim for indulgence, his demand for a double standard in marital misconduct, would be upheld by the law of the land...

(Trudgill, 1976, pp. 68-69).

The operation of the double standard of morality was frequently justified on the basis of what "nature" had decreed - it was women who became pregnant; women who were submissive and passionless and therefore less likely to succumb to temptation, unless they were very evil; and women who were socially protected from the horrors and temptations of the world and hence more condemnable if they "fell". The argument advanced by Clement Scott in 1894 accordingly ran:

If women were physically as strong as men, if they were never worn out or weary with child-bearing, if they were never sufferers from lassitude and fatigue, if they were endowed by nature with fierce power to battle, combat, and endure, if, in fact, they were born animals as men are, instead of angels as women are, then indeed they might and ought to exact the same standard of sexual morality from the husband as from the wife.

(Scott, 1894, quoted Trudgill, 1976, p. 73).

The operation of the double standard in Canterbury and its links with the sexualisation of women in general and female crime in particular may become more obvious when considered within the context of the historical development of the settlement and its attitudes and responses towards prostitution.

Early Canterbury's growth was characterised by rapid immigration, and in the twenty years from 1856 to 1876 the population of the province increased from approximately 6,000 to over 84,000. Under Wakefield's influence, the intention had been

to establish a model colony, in which all the elements of a good and right state of society should be perfectly organized and present from the first.

(Canterbury Provincial Council, 1873, p. 7).

The bid to encourage immigration to the colony necessitated the granting of assisted passages during the 1850s and 1860s, and later free passages were made available to particular types of workers - principally young, able-bodied, respectable working men and women of the labouring and domestic classes. However, considerably fewer women than men could be persuaded to emigrate, and the resultant sex ratio imbalance became a matter of considerable concern. Intending male emigrants to New Zealand were advised that they would be better engaged spending an extra week looking for a wife to accompany them than in buying a plough or horse (Graham, 1981, p. 124). However, the demand was not only for women as wives, but for women as domestic servants also, a demand which the Immigration Authorities were constantly engaged in trying to satisfy. Young single women who were "imported" to supply the demand for servants often ended up marrying instead, with it being stated that

the Lyttelton Times did not exaggerate when it claimed that shipload after shipload of young women arrived but most of these married quickly, 'nothing being left except a few ignorant helpless creatures who are only fit to be the merest drudges.'

(LT, January 26th 1875, quoted in Silcock, 1963, p. 84).

The concern for more single women in Canterbury, therefore, was not restricted to a mere numbers debate. Local agitation was increasingly expressed over the domestic abilities (or lack thereof) of the women who arrived here in search of employment. In 1862 the Lyttelton Times referred to "General servants whose only qualification is general ignorance" (LT, November 8th, 1862), and that same year saw the selectors

of women criticised for bringing to Canterbury "anydrab wild from the Connaught Ranges, who never saw the inside of anything above a pig sty" (Hamilton to Selfe, 1862, quoted Greenaway, 1972, p. 200).

But the most colourful and vocal criticisms of the immigrant women concerned not so much their domestic abilities as their perceived depravity and immorality. Recurrent criticism was made from the late 1850s onwards over what was seen as the appalling conduct of crew and passengers alike on many voyages to the colony, with this coming to somewhat of a head after the arrival of the Cameo in 1859 (for details, refer ICPS 447/59, Seager to Provincial Secretary).

In response to this situation Deputy Immigration Officer Seager called for a refractory suitable for the confining of single women likely to exert a bad influence on others, as well as a special lock and key for the single women's compartments so that the stewards and others could not have night access to them. Seager also recommended ~~that~~ alternative pursuits from immorality should be provided for single women on the ships, suggesting to begin with that all vessels be supplied with crochet and knitting materials as well as a large pile of "usefull (sic) readable books" (ibid.). The Superintendent of Canterbury responded to the concern over conduct on the Cameo by appointing Commissioners of Inquiry, whose report criticised the over-crowding and lack of discipline on board before roundly condemning the "insubordinate and unruly" behaviour of some of the single women passengers (ICPS 670/59 - Dr. Donald, J. Olliver and J. Hall to Superintendent).

Reports of misconduct on immigrant ships led to great doubts being expressed as to the suitability of such women for settlement in Canterbury. "Respectable" young women were desired, but the authorities felt also that it was respectable young women who were the least likely to be persuaded

to leave their families behind and emigrate to a far-off distant land. The situation developed into somewhat of a cleft-stick, however for,

The demand for single domestic servants was always insatiable and the Provincial Government believed that it had a social duty to equalise the number of men and women in the Province.

(Silcock, 1963, pp. 106-107).

The more the Government sought to facilitate the passage of young women to the colony, the worse the reports on such women seemed to become. Those who arrived on the Chariot of Fame in 1863 were described as "the off-scourings of all the prostitutes and thieves of London" (Hamilton to Selfe, 1863, quoted Greenaway, 1972, p. 198), while later arrivals on the John Temperley were reported as being "ignorant, depraved girls...picked up haphazard from the lowest haunts of infamy and vice" (LT, July 14th, 1866).

The Emigration Agent in Britain, John Marshman, was repeatedly criticised for his part in the selection of such women, with it being charged that either he was lax in carrying out the inspections or totally unperceptive and unfit for the task. However, Henry Selfe came to his defence, declaring to John Hall in 1866:

To suppose that Marshman can send you shiploads of selected angels guaranteed against the possibility of falling, that the sailors shall never mutiny and broach cargo, that the second and third officers shall never put their arms round seductive waists...is simply folly.

(Selfe to Hall, 1866, quoted Greenaway, 1972, p. 200)

Probably one of the most outspoken denouncers of the way in which the emigration scheme was being administered was Maria Rye, who visited New Zealand in the early 1860s. Described as "the personification of outraged and crusading Victorian womanhood" (Silcock, 1963, p. 175), she worked through S.P.E.W. (Society for Promoting the Employment of Women) to encourage middle class women in particular to emigrate to the colonies.

However, the question of encouraging middle class female emigration was a subject of considerable debate at this time. Conflicting information on the extent of such a demand was being disseminated in England. Maria Rye and Lord Sydney Osborne had urged that "a better educated and higher grade of women than the servant class" be sent to Australia and New Zealand. But the Colonization Circular's report came to the opposite conclusion:

The general statements therein contained are to the effect that there is no demand in the several colonies for females of a superior class, without capital, such as Governesses, Shopwomen, Milliners, etc., and their emigration is discouraged unless they have been invited to join relatives or friends able to maintain them on arrival.

(ICPS 1169(1)/62)

A further attached noted mentioned that "females of a superior class" had already come to Canterbury, and although their numbers had comprised only one or two per ship, even they had encountered great difficulty in obtaining employment (ICPS 1169/62).

The principal requirements for women in Canterbury were prescribed as fulfilling the service functions of either wives or domestic servants, and considerable concern was expressed by some when a third female service industry - prostitution - began to grow in numbers. In 1863 Marshman made mention of a letter he had received from a member of the Canterbury Provincial Government who had challenged him:

I hope your emigrants will in future be of a better class than those which have been sent lately - we want good servants, not young women meant to supply the Towns.

(ICPS 478^A/63)

while soon after the Chariot of Fame had arrived one of the Immigration Commissioners had complained "You have brought us a nice sample of young women - they are all on the streets already" (ibid.).

The police were instructed to compile an Immorality Return, in part to assess the extent to which it was assisted immigrant women who were involved in prostitution. The return showed six of the fourteen known prostitutes in Christchurch in 1864 to have come to New Zealand at entirely their own expense, and was accompanied by reassurances from Inspector Peter Pender as to the relative lack of immorality in the province (ICPS 1328(2)/64).

Despite the Inspector's claim that "...Christchurch is more free from vice than most towns" (ibid.), the sentiment increasingly came to be expressed during the 1860s that the importing of large numbers of women to Canterbury should be stopped. It was suggested that a public meeting be called to discuss "the social evil" and to determine ways to assist "these poor fallen creatures... [and] to save those who may yet be saved" (ibid.).

Accordingly on 21st November, 1867, a public meeting convened by the Very Reverend the Dean of Christchurch took place at 3.00pm in the Town Hall "for the discussion of remedial measures for the 'social evil'" (LT, November 22nd 1867). Its time of day precluded most working men from attending, while its organisation precluded any contribution from women being made. A few males of high social status, such as the Rev. Torlesse, Dr. Turnbull, Mr. Reeves, M.H.R., His Honour Mr Justice Gresson, and Mr. C.C. Bowen, R.M., had been invited to draw up resolutions and act as movers and seconders in the meeting, but the Dean stated that

it would, of course, be open to any gentleman present to make any remarks he felt disposed to make or to propose amendments.

(ibid., emphasis added)

During the course of the meeting the aims of both reformation and legislation emerged, with calls being made both for the provision of opportunities for saving the fallen as well as for measures of repression

and regulation. On the reformation side, it was suggested by Dr. Turnbull and others that the existing House of Refuge be enlarged, although the latter's chaplain, Rev. Torlesse, said he would prefer to see a second refuge established instead so as to keep the numbers in each down,

for he believed that the peculiarities of character which were to be met with, and the difficulties in the management of ten girls would tax the patience and piety of any woman.

(ibid.)

The House of Refuge had opened in Cashel Street in 1865, with the aim of rescuing women from sin by providing them with work, shelter and a closely regulated lifestyle. The home partly financed itself by the washing it took in for the inmates to do, work which was seen by Torlesse as

constant, and yet not of so hard a kind to drive ~~them~~ back into desire for the old idle, careless life. I would not on any account advocate their being made pets of, but they must be treated with the utmost consideration, tenderness, and patience. Unfortunate women are, as a class, extremely ignorant, and as wayward as children; utterly devoid of principle, and saddest of all, with conscience so seared and deadened that they see no harm in sin, and know no shame - withal very easily excited and passionate.

(LT, November 18th, 1867)

Hence it was those women seen as confirmed in lives of prostitution whom the gentlemen at the Christchurch public meeting urged should have their lives much more closely supervised and regulated by the police. Mr. Reeves, M.H.R., advocated greater State involvement in issues of public health, and called for a system of "(humane) supervision over abandoned women" (LT, November 22nd, 1867). In so doing he explicitly countered one objection raised to such regulatory measures, namely

that if by medical supervision they improved the health of these unfortunates, they removed from them the punishment which Providence placed them under for sinning.

(ibid.)

Mr. C.C. Bowen, R.M., in seconding Reeves' motion, expressed the sentiment that the Anglo Saxon race had made the "worst hand" of repressing the social evil in the past because of

their high notions respecting the liberty of the subject, and a mistaken religious view on the matter under discussion.

(ibid.)

Bowen obviously lamented the fact that many people opposed the notion of legal interference in the lives of such women while he felt it would even be "a boon" to the prostitutes themselves if they were placed under medical supervision and legal restraint. One of the few dissenting voices seems to have come from the Rev. Lorenzo Moore who supported police supervision but was reluctant to approve the medical surveillance of prostitutes. Besides, he maintained, "where was the medical man who would undertake to go from brothel to brothel?" (ibid.).

From this meeting emerged a committee intent on determining the best ways to achieve the suppression of vice, and the members presented their report on 10th February, 1868. Female immigration was stated to be less responsible for prostitution than had so often been claimed, although the careful selection and supervision of single women was urged in order

to prevent the operation of causes injurious to the morals of the emigrants, both on the voyage and on their arrival in the province.

(LT, February 11th, 1868)

Additional gaol accommodation for women was recommended so as to provide a means whereby "comparatively innocent girls" could be protected from contamination by contact with "more hardened offenders" (ibid.). The

Committee also drafted a bill based on the English Contagious Diseases Act of 1866

which provides for the medical examination of prostitutes suspected of being diseased, and for their removal to, and detention when convicted, in reformatories having proper hospital accommodation.

(ibid.)

Those at the public meeting were unanimous in their support for such a proposal, and it was decided to request Superintendent Rolleston and Reeves to communicate with the Government as to the adoption into New Zealand legislature of a Contagious Diseases Bill, and to also urge that more provision be made for penalising those who knowingly permitted drunkenness, disorderly conduct, and the assembling together of prostitutes on public premises.

Pressure mounted increasingly during the next few months for the government to take legislative action on the problem. The Social Evil Committee sought information on the extent of prostitution in Southland, Otago and Canterbury, and approached the House of Representatives with the letters of recommendation received from doctors and the police. A brothel return indicated there to be 42 prostitutes now living in Christchurch (ICPS 835/69), and the recommendations made to the House included the explicit suggestion that "An Act for the Suppression of Vice and the Prevention of Contagious Diseases" be introduced immediately.

The year 1869 in fact saw two measures of repression being adopted in Parliament's September session. The Vagrant Amendment Act, 1869, made any

common prostitute loitering and importuning passengers in or upon any street, road, thoroughfare or public place for the purpose of prostitution

now liable to a penalty of up to £2 or one month's imprisonment (s.2).

Additionally, any person selling liquor who

shall knowingly permit or suffer prostitutes
or persons of notoriously bad character to
meet together and remain therein

could receive a fine of £5 (s.3). The Act also provided for any person singing "an obscene song or ballad" or uttering obscene or abusive language in public to incur a penalty of up to £10 fine or three months imprisonment (s.4).

Also in 1869, partly as a result of the fears surrounding the opening of a naval station in Auckland (Grimshaw, 1972, p. 8) but largely due to Rolleston's campaigning in Parliament (Sutch, 1973, p. 91), "An Act for the Better Prevention of Contagious Diseases" was passed, generally known and referred to by its short title, The Contagious Diseases Act. This Act stipulated that any woman whom the police had "good cause to believe" was a common prostitute could be served a notice demanding that she report for medical examination and if

found to be affected with a contagious disease
...shall thereupon be liable to be detained in
a female reformatory. (s.14)

Women detained under this act could be held in a reformatory for up to three months, with the visiting surgeon having the authority to confine her for a further three months if he saw fit to do so. A woman's refusal to comply, either by failing to submit herself for examination or quitting the reformatory before discharge, saw her deemed legally guilty of a criminal offence and liable to imprisonment for up to one month for a first offence and three months for any subsequent such offences. The arresting constable needed no warrant in order to take into custody any woman who had left the reformatory without being discharged (s.21), and even in its general application the Act left much discretion in the hands

of the police regarding whether or not they had "good cause to believe" a woman was a prostitute and subject to compulsory examination and possible detention. Once considered to be a prostitute it was incumbent on the woman to prove she was not one, yet

there was no liability on the police to prove 'good cause', nor was there any definition of prostitution.

(Crow, 1972, p. 234)

The Contagious Diseases Act did not automatically apply to all of the Colony but only to such districts as the Governor might proclaim to be subject to its provisions, usually based on the extent to which the "social evil" was considered to be problematic in the various provinces. Thus in practice the Act seems only to have been enforced in Canterbury 1872-1885 and in Auckland 1882-1886 (Macdonald, 1983), with the other provinces either not conceding there to be a problem with prostitution or preferring to use the Vagrant Amendment Act as a control measure. Even in Auckland and Canterbury, however, the provisions of the Vagrants Act were much more frequently applied than those of the Contagious Diseases Act since the latter relied on a degree of cooperation between the police, doctors, and gaols which was difficult to obtain. Additionally, it seems the principal concern was with controlling prostitution rather than venereal disease alone, and the Vagrants Act provided far wider possibilities for the apprehension and detention of prostitutes than the Contagious Diseases Act.

New Zealand's Contagious Diseases Act was modelled closely on the British Acts of 1864, 1866, and 1868, the first of which had been passed quietly and with little realisation of its full intent - some thought it was in fact just another animal regulation! (Crow, 1972, p. 241). However, whereas in England the Acts were to apply only to the women resident in

garrison towns, in New Zealand once the Act was invoked in a particular province any females living in or within five miles of that province fell under its jurisdiction. The moral climate of the day was especially censorious of any woman so apprehended, and "Even if a woman were found innocent after arrest, the arrest itself was enough to ruin her" (ibid., p. 234). In both countries, however, and wherever else the Contagious Diseases Acts were applied (e.g. India and Tasmania) it was only women who were subject to the repressive measures. Just as the "social evil" referred only to women's part in the prostitution trade, so it seemed only women were associated with and blamed for the spread of venereal disease. The fact that the continuing operation of the prostitution business was entirely dependent on patronage by males was completely ignored.

Thus the attitude towards venereal disease shown in the Contagious Diseases Act was in fact a startlingly clear example of the prevailing Victorian double standard of morality.

Victorian attitudes towards prostitution reflected a marked degree of confusion emanating from their general ambivalence towards all sexual matters. Such ambivalence was reflected in the range of theories advanced as to why women entered prostitution. While some of these followed the seduction argument outlined in Chapter 4, others stressed the role played by poverty in "forcing" women on to the streets. However, often it was not poverty in the sense of economic necessity that was stressed so much as some of the manifestations of poverty. The over-crowding, lack of privacy, and enforced bed-sharing of working class life - what Acton referred to as "The Promiscuous Herding of the Sexes" (quoted Harrison, 1977, p. 236) - were often condemned as the "not infrequent prelude to a life of harlotry" (Acton, quoted ibid.).

A coveting by the poor of the luxuries of life would lead them into a life of sin to achieve these aims - "a love of finery" came to be seen as persuading women to enter prostitution (Harrison, 1977, pp. 233-235), while Acton was to point, among other things, to "love of drink, love of dress, love of amusement" (quoted in Finnegan, 1979, p. 7). One of the many girls who serviced the notorious Walter's lust was recounted as saying not that she was too poor to eat, but that she preferred to let men "fuck" her for sausage-rolls, meat pies and pastry than subsist on the bread and gruel her mother provided (Sigsworth and Wyke, 1972, p. 8).

That the "wages of sin" were valuable for providing far more than just life's bare necessities was reiterated in a letter to the Lyttelton Times in 1867, lamenting the way in which "vagrant men and abandoned women" lured ~~younger~~ girls into vice by regaling them with accounts of the pecuniary gain which they could receive. The prospects held out to these young women were especially portrayed as providing them with "facilities for display, and the ready command of all the luxuries of life" (LT, November 28th, 1867).

Thus poverty was linked to prostitution often indirectly, rather than as sheer economic necessity. Some British accounts did exist showing low wages and so forth to influence women to take up prostitution to supplement their incomes (e.g. Mayhew's accounts, quoted in Harrison, 1977, pp. 230-232; Hollis, 1979, pp. 202-203), but in New Zealand the myth was being fostered that this was a land free from poverty and thus some other explanation had to be sought for why women entered prostitution. One solution was of course to deny that there really was a problem with prostitution in the colony.

The other was to insist that if women became prostitutes it was not from "actual want" but because they were driven to it by their own vicious inclinations or by drink or love of finery (Torlesse (1864), quoted in Anderson, 1981, p. 101). Opposition was expressed to the way in which prostitutes were portrayed as social "unfortunates", with one editorial proclaiming

They are not unfortunate in the true sense of the word, for they have made themselves what they are by their own acts, and we are simply condoning their offence towards society when we give them titles which imply that their guilt is the result of circumstances beyond their control...

(Canterbury Standard, December 6th, 1864)

It was also argued, as we have seen hinted at by Torlesse, that it was the lustful inclinations of some women which led to their involvement in prostitution, but this posed a problem in an age dominated by the ideology of female sexual passivity. Confusion seems to have existed in practice over whether all women were in fact passive, with some writers modifying the view of inherent passivity to suggest that such a state was lost after satisfying sexual intercourse had been experienced. In 1850 The Westminster Review stated categorically that

Women's desires scarcely ever lead to their fall for the desire scarcely exists in a definite and conscious form, till they have fallen.

(quoted in Sigsworth and Wyke, 1972, p. 82)

The class differences in attitudes to sexuality referred to earlier may well have prescribed that the everyday working class acceptance of sexuality provided them a certain freedom from the repressive constraints of middle class ideology and its dictates as to what should be experienced, by whom, and when, with the effect of the latter possibly enhancing the demand for freer social expression to be found in other quarters.

It was essentially such class differences in attitudes to sexuality which were reflected in the various stances adopted on prostitution and the Contagious Diseases Act. Members of the gentry and upper classes (who were generally of Anglican persuasion) tended to view prostitution as a necessary evil but one which needed to be regulated and civilised. In contrast with this the middle classes, especially the lower middle classes and those of Non-Conformist sentiments, maintained prostitution to be a great social vice demanding not regulation but eradication. Thus, rather than campaign for brothels to be made safe, they urged that prostitutes be made respectable through conversion and reformation.

Meanwhile, amongst the working classes those who were skilled labourers (the "aristocracy of labour") may have tended more towards the middle class view, but mostly prostitution seemed to be regarded as necessary but not necessarily evil - economic circumstances and restricted job opportunities inevitably rendered prostitution to be one of the few career options for many girls. Thus prostitution was embraced by some as a welcome alternative to domestic service or factory work, despite the associated risks of police harassment, venereal disease and so on. The lifestyle also accorded working-class women an independence denied them in most other areas, for through it they could remain single yet provided for, with flexible hours, and "owned" by neither husband nor employer for as long as they wished to remain so.²⁰ Walkowitz (1980)

20 This was especially true of prostitution in the days before it came to be more organised and hierarchically structured with pimps, madams and so forth. Even by the 1890s in Canterbury by far the majority of women working as prostitutes operated individually from their dwellings rather than as members of established brothels.

indicated that reformers and rescuers of nineteenth century prostitutes in England claimed "a wild impulsive nature, a restlessness, and a desire for independence" to be characteristic of the girls who entered the profession, and that

Moreover, seasoned prostitutes were capable of independent and assertive behaviour rarely found among women of their own social class.

(Walkowitz, 1980, p. 20)

Yet it is unclear whether these factors attracted women to prostitution or resulted from the comparatively unrestricted yet socially demanding and often harassed life of prostitution.

Certainly many of the Canterbury prostitutes exhibited a boisterous vitality and exuberance in their lives which makes them distinctly attractive in comparison with the idealised portrayal of Victorian women as frail and cosseted chattels. Whereas middle class and upper class women could opt for a pampered, protected lifestyle, the realities of working-class life demanded resilience and fortitude. For many women lives of marital and domestic subservience characterised by long hours of work and the stresses of poverty meant that their whole lifestyle became correspondingly wretched and depressed. While misery and despair were undoubtedly the lot of some prostitutes (evidenced to some degree in habitual drunkenness and occasionally suicide), others exhibited a "bolshiness" uncharacteristic of most other women of their era. Isabella Leckie was refused a drink at the Palace Hotel in 1881, so went outside and smashed one of the hotel windows (LT, February 10th, 1881). Similarly when Mary Cunningham felt aggrieved by the actions of a gentleman against her she went to his house at 4.00am one Sunday morning and hurled bricks through the windows (LT, January 23rd, 1883). Arresting constables ran the risk of having their uniforms destroyed (e.g. LT, January 2nd, 1877; December 13th, 1883), or the cabs conveying the women to the lock-up

damaged (e.g. LT, August 4th, 1883). Prostitutes were also frequently up in court for fighting in the street (LT, January 21st, 1881; December 4th, 1882) and were also occasionally involved in assault and robbery cases (Press, September 5th, 1866).

Yet it was not only prostitutes who displayed an aggressiveness at times quite out of keeping with the Victorian image of womanhood, for as we have already seen with regard to sexuality, that image was a class-based one and was not necessarily shared or even aspired to by the working class. Struggling for money, working long hours, living in cramped conditions, plagued by hassling men and demanding children, vulnerable to the whims of the police - these were the circumstances which formed the background against which working class women often lived their lives. Passivity was no defence in these conditions. Thus while some women were often the victims of rapes, assaults, and so on, it should be no surprise to learn that women were also on occasion the perpetrators of violence. Mary Ann Burmeister, the wife of an oyster saloon-keeper, felt him to be a habitual drunkard and assaulted him in 1881 (LT, January 18th, 1881); Bridget Leader was charged with husband-beating (LT, January 5th, 1877); and Elizabeth Stevens pelted her husband with stones (LT, January 9th, 1883).

However, not all female violence was directed against their husbands (e.g. LT, February 22nd 1883; November 23rd, 1887). One incident showing the under-estimation of women as forces to be reckoned with occurred in 1881 when a posse of bailiffs arrived to evict the occupiers of a house in Hereford Street. In order that the eviction might proceed smoothly the senior male member of the house had been lodged in the Addington Gaol - subsequent evidence revealed him to have been in fact 80 years old, and he

actually died in gaol a few days later because, said the Lyttelton Times, of the shock induced by such change (LT, January 11th, 1881).

What the bailiffs had not anticipated, however, was that

His wife, a strapping and voluble Irishwoman, armed with dog and gun, barred the gateway, and before the appalling prospect of tongue and dogbite, physical and mental injury, the limbs of the law fled in dismay.

(LT, January 7th, 1881)

Hence the lives of prostitutes challenged middle class stereotypes of feminine frailty and passivity in a variety of ways, and with the response to those usually reflecting the prevailing double standard of morality. A wide gulf separated the types of social behaviour deemed appropriate for men and women, resulting in strong censure of those women whose lives exhibited the more "masculine" traits of promiscuity and drunkenness.

Colonials often seemed to feel that prostitution was more readily understandable and acceptable in the British context, but that, like the poverty seen as a causative influence in producing it, being jostled by whores was one aspect of life at home that they had hoped to escape by moving to the colonies. Hence a letter to the paper at the time of the social evil debate in 1867 challenged the philanthropic approach to prostitution on the basis that

here, at the antipodes, women who might easily win a livelihood and secure a happy home rush deliberately and by sheer baleful choice into a career which ends in this world at 'the dark arch o'er the black flowing river'.

(LT, November 30th, 1867)

After the harsh realities of economic depression and unemployment had rubbed some of the sheen off the utopian visions held for the new land, however, more people came to recognise that financial considerations

could be an influential factor, and that these could involve just as much the low wages paid for "respectable" female labour as outright unemployment and destitution (LT, July 21st, 1897).

SEXUALISATION AND THE DOUBLE STANDARD IN THE 1890s

The latter years of the nineteenth century did in fact witness many changes in social attitudes and expectations, some of which have already been hinted at in this chapter. New Zealand society was in a period of transition, with the early characteristics of the frontier era disappearing in the face of increasing urbanisation, industrialisation and modernisation (Olssen, 1981). Changes towards specialisation and bureaucratisation in the occupational sphere demanded accompanying changes in the education system, and as more of the population became skilled and educated so the middle class sector began to increase in numbers and social influence (Olssen, 1981, p.271). The political domination of the rural-pastoral sector which had characterised the early settlement years was increasingly weakened as the middle and working classes became more organised and unionised, and by the end of the 1880s there was widespread agitation over the growing numbers of social ills in the country. Yet while the economic realities of depression and unemployment were recognised, increasing concern came to be expressed by the middle classes in particular over the moral destruction seen as threatening the society.

A conviction that urban growth had spawned most social problems, such as delinquency, feminism, and poverty, prompted many Christians to believe that a crisis confronted their churches.

(Olssen, 1981, p.263)

It was against this backdrop that the social purity crusaders mobilised themselves for action and that the government assumed an increasingly interventionist role in issues of social welfare (Oliver,

1979; Tennant, 1979). Hence the 1890s saw both the proliferation of reformist and philanthropic organisations intent on securing individual improvement as well as growing efforts to legislate morality and regulate family life. Many of the measures adopted were presented under the guise of benevolent welfarism, yet as we shall see, in essence they reflected the same double standard of morality which had characterised the early period.

Eveline Cunningham's calls for state intervention in the lives of the "drunken old hags" of Christchurch must therefore be seen within the context of the trend towards greater government involvement in social reform and welfare measures. Yet the "humanitarian" and "enlightened" nature of much of the legislation of the late nineteenth century is still lauded despite salutary warnings that what was passed off euphemistically as "social welfare" could perhaps be more accurately described as "social efficiency" (Oliver, 1979) or straight "social control" (Tennant, 1979).

As part of the moral panic of the 1890s calls were made for the Contagious Diseases Act to be again enforced against immoral women (LT, February 10th, 1892). It was also suggested that the Addington Gaol be designated a criminal lock hospital for vagrants found to be diseased following the compulsory medical examination which it was recommended should accompany their conviction (LT, June 5th, 1895). In 1897 the inquest on a child declared the boy's internal organs to have been "simply riddled as the result of hereditary syphilis", and the jury urged as a rider to their verdict

That in the opinion of this jury the Contagious
Diseases Act should be at once put into operation
in Christchurch

(LT, October 9th, 1897)

The Women's Social and Political League came out strongly against this suggestion and called urgently on the Government to repeal the Act immediately (LT, October 14th, 1897), while others responded by writing

indignantly to the Lyttelton Times declaring

Repeal the measure designed to preserve the purity of the race! Rather, forsooth, let its sphere of action be extended. Let it apply equally to both sexes.

(LT, October 16th, 1897)

The Contagious Diseases Act was not applied in Canterbury again, but the fact that the prospect was the centre of such debate epitomises the thrust in the 1890s towards state legislated social purity.

The prohibition movement was part of this crusade for colony-wide purification. As great concern was expressed over the liquor traffic in New Zealand, Tommy Taylor, Leonard Isitt and other Christchurch politicians and reformers alleged that the police were failing to maintain and enforce the country's laws regarding alcohol-dispensing (Cocker and Murray (eds.), 1930; Police National Headquarters, p.13). As well as providing evidence which showed publicans being able to bribe policemen to ignore after-hours drinking and so forth (Richard Hill, *Pers. comm.*, July, 1983), temperance crusaders also expressed concern that the police were turning a blind eye to prostitution.

In 1894 opposition was stated by a correspondent to the Lyttelton Times to suggestions made by the Women's Christian Temperance Union that in order to rectify their laxity, the police should mount "whore-hunting squads" to track and follow prostitutes in an effort to free society of the "social evil" (LT, October 18th, 1894). When allegations of police tolerance of prostitution were investigated by the 1898 Commission Inquiry, the report produced stated that

The law as to brothels appears to be satisfactorily enforced. A considerable amount of prostitution undoubtedly exists, but where it has become a nuisance by the establishment of brothels the police have taken action to suppress it ... although there is reason for believing that houses of that class remain, there is no ground for suggesting they are

carried on with the connivance of the police, or that the police are indifferent or negligent in dealing with them.

(AJHR, 1898, Vol. 3, H-2, p.xxv)

Efforts by the police to prove their diligence in this regard resulted in greatly increased conviction rates for prostitution and brothel-keeping in the 1890s,²¹ but with the double standard of morality still operating to penalise only the involvement of women in such offences.

One of the major areas of concern in New Zealand throughout the 1890s was juvenile crime, but while it was feared that the colony's youth in general were becoming wild and unruly, again it was the behaviour of the girls which attracted the most attention. Certainly concern had earlier been expressed about young girls leading "dissolute lives" in Christchurch brothels,²² but generally it seems to have been a concern over individual

21 The Annual Police Report of 1899 reported that prosecutions against the keepers of houses of ill-fame had increased from only two or three per year in the 1880s to an average of about 30 per year in the 1890s (AJHR, 1899, Vol.3, H-16, p.2).

22 For example, a correspondent over the social evil question in 1867 had quoted at length an extract from Southern Lights and Shadows (written in the Australian context) which, he maintained, could equally apply in Canterbury, describing the sad spectacle of vice on the city streets:

I have seen young girls who, a few short months before had wept beneath a parent's blessing and farewell, gibbering incoherent curses in the worst abodes of new world devilry and crime - such poor sad objects that their mothers, praying for them rightly in their quiet far-off homes, had passed them with a shudder in the streets, and never known them for their own! Girls with baby English faces; women scarred with years of stolid sensuality; decrepit harlots, blind with age and sin - with scarce a finger touch of God left whole upon them - meet us here fifteen thousand miles away, in greater and drearier proportion than in the streets of the most wicked centres of old-world civilisation.

(LT, November 30th, 1867)

girls of 14 and 15 working as prostitutes, and individual remedies were applied such as placing them in the Industrial School (e.g. LT, August 4th, 1897; March 9th, 1881; May 17th, July 17th 1883; January 20th, 1888). Now, however, as part of the crusade for temperance and social purity, increasing agitation was being expressed that girls of 12 and upwards could still be legally employed in brothels²³ and in 1893 the age of consent was raised to 14, and finally to 16 in 1896 (Sutch, 1973, pp. 92-93), yet this was only one area where the pressure of public opinion, fuelled somewhat by a moral panic, resulted in social intervention in the lives of juveniles being at least seriously mooted and debated by the Liberal Government.

The 1890s saw increasing numbers of middle-class women extending their private domestic role into the public arena, often through involvement in the emerging network of women's organisations which proliferated towards the end of the nineteenth century.²⁴ The "elevated" status of motherhood noted earlier could be threatened by hordes of recalcitrant youth whose behaviour perhaps demonstrated that child-rearing practices in the colony left much to be desired. Increasing concern was expressed over wayward youth, often based on the assumption that "crime would diminish if only children could be controlled in their homes" (Gregory, 1975, p.13). These fears became focussed through a growing concentration on the potential for evil which was said to emanate largely from young people keeping company with each other

23 The age of consent in Britain had been raised from 13 to 16 in 1885 (Sutch, 1973, p.92).

24 For example, the Canterbury Women's Institute, National Council of Women, Women's Christian Temperance Union, Women's Political Association, and Women's Social and Political League.

The growth of the street-larrikin nuisance was referred to by the Commissioner of Police, Colonel Hume, as perhaps the most important question the police had had to deal with during 1891. Such objectionable behaviour as collecting at street corners and obstructing footpaths was a constant source of annoyance to innocent passers-by.

(AJHR, 1892, Vol.3, H-21, p.2, cited *ibid.* p.7)

Concern was expressed in Christchurch over the "young blackguards that infest our street corners on Sunday evenings" and whose "use of filthy language is one of the great abominations of our times" (Press, June 23rd, 1896), while scorn was poured on the formation of street gangs like the Madras Street Warriors. Yet although it has been argued elsewhere that "The incidence of larrikinism was seen to be a problem which belonged overwhelmingly to boys" (Gregory, 1975, p.8), a substantial amount of the contemporary concern expressed in Christchurch at least was focussed on young girls.

In 1892 an article on the "Rowdy Class" printed in the Star stated that

And the most shocking feature in the processions which block the streets is the swarms of young girls who travel up and down the beat.

(quoted in LT, February 6th, 1892)

This prompted a letter to the Lyttelton Times condemning the manner in which these girls can be seen "scampering up and down 'the beat', jostling the men, giggling and grossly misbehaving", but declaring that these

are not bad girls, are not larrikin girls of the lowest type, are not children of disreputable parents; they are the daughters of respectable parents who, in nine cases out of ten, believe their girls are quietly attending their church or chapel evening service!

(LT, February 6th, 1892)

The answer was said to lie in much firmer parental control, for this was the only way in which young girls could be brought up to be "What God

meant them to be - noble, upright, virtuous mothers and wives" (ibid.).

Further correspondence on the "social problems" of Christchurch similarly condemned

These 'beautiful imps' that roam about the town on Saturday and Sunday evenings, dressed in the immortal (sic) wideawake, bell-bottomed pants and high-heeled boots, with the inevitable pipe in their mouths, drinking long beers, cursing and swearing in as public a manner as they possibly can ...

(LT, February 10th, 1892)

The fears expressed about these girls were to emerge later that decade in suggestions clearly echoing the notions of sexualised female criminality discussed earlier, for it was a concern over possible "immorality" in girls which elicited calls for greater social control measures, rather than anxiety over actual female criminality. In other words, the acts deemed most "criminal" for girls were those which implicated them in charges of promiscuity. As Gregory has pointed out,

Girls were not charged with the same range of offences as boys, and tended to figure more prominently in the type of activity referred to euphemistically as juvenile 'immorality' or 'depravity'. Girls who walked the streets at night were seen as especially susceptible to this sexual misconduct.

(Gregory, 1975, p.8)

In 1896 a Juvenile Depravity Suppression Bill was mooted which would allow policemen to arrest any young person found loitering in the streets after 10 pm and take them away for interrogation (ibid., p.56). In response to this the Women's Christian Temperance Union in Christchurch advocated that girl offenders should have a respectable women present at the interrogation (Press, August 21st, 1896), while the Women's Political Association urged the appointment of women to the police force (Press, August 24th, 1896). Generally however the Bill was opposed on the grounds that it interfered too much with individual liberty, was open to abuse, and could create a set of branded juvenile "crims" (Gregory, 1975, p.57).

Calls for intervention continued, however, with "glaring examples of vice in young girls" prompting further demands for the Government to legislate. In Wellington it was again advocated that women constables be appointed

who should have the power to arrest young girls who might be found on the wharves or streets at night, and were suspected of leading immoral lives.

(LT, September 11th, 1897)

and in "bad cases" such girls could be detained in reformatories for a number of years. The Seddon Government proposed then a Young Persons' Protection Bill, but this also met with opposition - for example, in seeking to qualify its provisions, the Canterbury Women's Institute came out against public corporal punishment and the inclusion of the Chinese as a class with prostitutes, while also urging "protection" for both girls and boys until age 21 (LT, October 18th, 1897). The bill was still debated at considerable length, but finally discarded in 1900 (Gregory, 1975, p.58). What its debate reveals, though, is a concern not only with criminality in both boys and girls but with juvenile immorality, especially as it pertained to females. Thus again it reflects the double standard of morality, as well as the sexualisation of female crime, and introduces what was to become in the twentieth century an even more condemnatory stance on female promiscuity and vagrant "ship-girls".

CONCLUSION

In retrospect it should now be apparent that there were two major periods in Canterbury's history which saw particular concern being expressed over female immorality. Police registers of brothels were compiled in the 1860s, and again in the 1890s, and it was during these

two decades that the most fervent calls were made for government intervention in the lives of prostitutes. Yet the motivating concerns behind such movements were somewhat different in each of these periods.

In the 1860s the main political thrust was from the gentry and upper classes, whose concern it was to regulate and "civilise" prostitution, and it was largely this ethos which underlay the legislation of that era (such as the Contagious Diseases Act, 1869, and the Vagrancy Acts, 1866 and 1869). By the 1890s, however, it was the influence of the predominantly lower middle class social purity crusaders campaigning for the prohibition of "social evil" who were making their presence felt. Spurred on by a desire to purge the colony of immorality, these reformers attempted to "serve" the fallen and restore them to respectability. The extensive involvement of middle class women in such philanthropic work reflects in part their commitment to the notion of women as society's moral guardians, a commitment which also underlay much of the agitation for female suffrage (Bunkle, 1980, p.64). However, this commitment was also partly responsible for the resurgence in the 1890s of widespread concern about prostitution, for the existence of the latter challenged the idealised image of women as pure, redeeming mothers which the proponents of the cult of domesticity were advancing.

While groups such as the Women's Christian Temperance Union came out in opposition to the double standard underlying the policy of prostitution, it was an opposition based largely on a desire to make men as "pure" as women by prohibiting the indulgence of either sex in promiscuous intercourse (ibid., pp.62-63). Essentially their bid failed. The double standard of morality so influential in the treatment of female deviants in the nineteenth century lingers on today, and with it the

continued sexualisation of criminality in women. Thus the Justice Department's statement (already quoted in Chapter 2)

That the law which is invoked against females...
is in many cases an attempt to regulate sexual
behaviour by legal sanctions.

(Department of Justice, 1968, p.234)

could equally have been written in the days of frontier vice and colonial strumpetry.

CHAPTER 6

CONCLUSION

This review of women and crime in nineteenth century Canterbury was largely motivated by the desire to participate in the process of "making women visible" (Oakley, 1974). Three areas of female "invisibility" derive from the relative neglect of women by the disciplines of sociology, history, and criminology - thus part of the intention behind the research was to contribute towards the feminist aim of overcoming androcentrism in the social sciences and to the chronicling of "herstory".

I also hoped that this examination of women's herstory would augment our knowledge of working class women in particular, whose experiences are seldom as well recorded as those of women from the middle class. While such understanding would be better served by materials written by the actual women themselves, the typical absence of these forces us to rely on such resources as court records to provide at least some documentation of working class life. The utility of such records for this purpose resides largely in the information they implicitly contain on the perceptions underlying the policing and gaoling of women, while examination of the crimes committed by women illustrates the strategies they often adopted in response to the pressures and stresses of working class life.

The central focus, however, was not on the law breakers so much as on the perceptions of women held by the law enforcers. Hence the particular stereotypes of women contained within the criminological literature were

examined with a view towards investigating the extent to which these were invoked in the treatment of women by the criminal justice system in nineteenth century Canterbury. These stereotypes were defined in terms of the particular conceptions of women embodied in each, including such notions as the "masculinised", "psychiatrised" and "emancipated" female offender. The translation of these stereotypes into recognisable images yielded a series of female criminal "types" ranging from the 'colossal petticoated atrocity' to the "poor pitiful pearl" (Wilson and Rigsby, 1975).

The two major issues which emerged from the critical examination of the stereotypes revolved around the polarized themes of victimisation and sexualisation, of madonnas and whores. Broadly speaking, women offenders could be perceived either as weak, frail creatures in need of leniency or protection, or as lust-driven depraved whores deserving only of condemnation. Both these perceptions were located within the context of Victorian sexual ideology and shown to rest upon the cornerstone of a double standard of morality which attempted to control all women through the twin mechanisms of damnation and deification.

The examination of the particular forms these perceptions assumed in practice required a focus on the context of crime in colonial Canterbury. A review of the material from the Supreme and Magistrates Courts between 1852 and 1897 revealed there to be marked sentencing disparities between male and female offenders. Cases heard in the Supreme Court demonstrated a considerable reluctance to imprison women, especially those women from backgrounds deemed "respectable". In the Magistrates Court, however, proportionately more convicted women than men went to gaol. This trend was associated with the high arrest and conviction rate for drunkenness

in women, and more especially with the high recidivism rate of a particular group of women.

Investigation of court reports, newspaper accounts and so forth indicated the extent to which the sentencing personnel exhibited characteristically polarized perceptions of the women offenders appearing before them. Their treatment of some women reflected at times a denial of female culpability, with the woman offender depicted as an essentially helpless victim of life's vicissitudes. Such women characteristically received sentences reflecting the assumption that feminine weakness demanded leniency and protection. Yet the attitudes expressed to other women often appeared in stark contrast to this view, for the Judges and Magistracy were quick to castigate and condemn those women convicted particularly of public order and morality offences.

Further examination of the "victimised" perception of women offenders analysed the major sentencing trends evidencing this stereotype. The legal presumption of coverture which existed in New Zealand until 1893 (Sutch, 1973, p.85) was revealed to exemplify a view of married women in particular as the frail followers of more powerful men. The use of this presumption in nineteenth century Canterbury was mediated on some occasions by the disreputable nature of the offence committed, while on other occasions it was extended to cover situations of joint offences where women were automatically assumed to be less responsible for the commission of the crime than their male counterparts. Arguments which suggested that women were particularly susceptible to external factors such as malevolent male influence, economic destitution and so on were also shown to have been based on perceptions of inherent weakness in women. Such a view was reflected in claims that the female "generative phases" (Pollard, 1950) made women especially prone to mental derangement - this plea being

considered in Canterbury within the context of cases of infanticide.

What emerges from an examination of the lives of women in nineteenth century New Zealand is that women were extremely vulnerable as a consequence of their inferior social position. They were not so much victims of inherent frailty or tendencies towards puerperal mania so much as the victims of constraints on their capacity to earn sufficient to support themselves and their children. This focus on economic constraints accordingly leads us to a view of prostitution as a rational social choice made against the background of severely restricted opportunities for earning as a woman. As such it therefore counters the arguments advanced which reflect the sexualisation of female crime through the attribution of carnal lust to a woman's entry into whoredom.

Further evidence of the sexualisation of female offending is manifest in the way in which promiscuity in women has been identified as criminal and policed accordingly. In nineteenth century Canterbury immorality in women emerged as a major generator of public outrage and court condemnation, with a small group of prostitutes clearly emerging as the ostracised "damned whore" sector of the society.

The suggestion by Anne Summers (1975) that the colonisation of women in Australia reflected the social control purposes achieved through the operation of a "Damned Whores/God's Police" dichotomy was applied to the New Zealand context and substantially modified. The treatment of women brought before the Canterbury courts suggests them to be perceived not simply as "damned whores" or "God's police", but to be located on a continuum between these two extremes. This complexity was then explored by identifying the layers of "badness" and concomitant levels of social antagonism expressed towards women who deviated from the social and legal norms.

Reinterpretation of Summers modified the sexualisation argument, for it seems that the women arousing the most contempt were those who, as well as being "immoral" in terms of the sexual prescriptions of the day, were also perceived as threats to the social order by virtue of the vagrant, unattached, and often alcoholic lives they led. They were the women in whom no vestige of Victorian respectability could be found, in contrast to other prostitutes who, while no doubt scorned for their immorality, nevertheless carried their chosen vocation off with dignity and discretion.

The sentencing of women by the courts in Canterbury thus suggests the translation of complex social realities into an equally complex distribution of (at times) competing images of female deviants. Women were thus not automatically condemned and ostracised as a consequence of appearing in the criminal courts; rather, responses to them were dependent on such mediating factors as the nature of the offence, the extent to which it constituted a public nuisance, the appearance and marital status of the defendant, her demeanour in court, and so on. The basis on which these distinctions were drawn can be traced to Victorian sexual ideology, which prescribed for women a passive sex role characterised by purity, maternity and gentility. While such an ideology was accepted by, and hence constrained, many middle class women, its prescriptions for working class women were often too much at variance with the harsh realities of their lives for them to fully subscribe to its standards. Yet those whose lifestyles deviated from the feminine ideal faced possible intervention and detention, and the chances of such an eventuality increased commensurate with the departure of such women from the norms of quiet and sober respectability.

What, you may be asking, is the relevance of exploring such details about women and crime in nineteenth century Canterbury?

Initially it is useful to indicate some of the ways in which the information obtained from the Canterbury courts is consistent with our existing knowledge of female offending. Attention was drawn in Chapter 2 to the enormous sex differential in offence rates for men and women, and despite all the social, economic and emancipatory changes which could possibly have inflated the female crime rate, this differential has remained almost constant over the last hundred years. Thus the 1977 Justice Department statistics revealed the sex ratio of men to women appearing in the Supreme Court to be 12:1, while in the period 1882-1897 it was approximately 12.5:1. Similarly, the male:female ratio for appearances in the Magistrates Court was 5:1 in 1977, compared with 6:1 in the years 1888-1897.

The sex differential in offending was linked to the neglect of the female offender both as an object of research and of penal theory and practice. In the nineteenth century such neglect was evident in the virtual ignoring of women in official publications on crime in New Zealand - thus, for example, all the early police manuals providing instructions for dealing with prisoners made no mention whatsoever of women - "indeed there is a distinct implication that all offenders will be male!" (Richard Hill, pers. comm., July 1983). Such neglect is still apparent today in Justice Department publications - the only cohort study of criminal delinquents (the Joint Committee on Young Offenders) has a solely male sample, while the recent Penal Policy Review Committee Report devotes less than one page to the problems faced by women in prison.

However, the relevance of the nineteenth century material also extends to much broader considerations. Much of the court evidence indicated the extent to which an essentially small group of deviant and "immoral" women in Canterbury had their lives subjected to virtually constant police surveillance. Yet the significance of this fact extends beyond the harassment of individuals to the realisation that all women's lives were being controlled in part by the censuring and ostracising of these "deviants". Moves to regulate the lives of prostitutes reflected but the growth of an overall interventionist policy in the nineteenth century, a policy intimately linked to fears of growing moral contagion and decay.

Donzelot's account of the emerging intrusion of the State into the family in nineteenth century France has distinct parallels within the New Zealand context (Donzelot, 1979). The aims of the ~~moral~~ purity crusaders of the 1890s merged in part with those of the government even though the motives of the two sectors differed -

What troubled families was adulterine children, rebellious adolescents, women of ill-repute - everything that might be prejudicial to their honor, reputation, or standing. By contrast, what worried the state was the squandering of vital forces, the unused or useless individuals. So, between these two types of objectives there was indeed a temporary convergence on the principle of the concentration of the family's undesirable members.

(Donzelot, 1979, p. 25)

The increasingly regulationist stance evident in the 1890s was foreshadowed by the passing of the Contagious Diseases Act in 1869, and by the extension of measures making men liable for the support of their wives and children (Sutch, 1973). Further evidence of such collusion of interests was later manifest in the calls of the middle class reformers

for foundling hospitals to be established and the State's response in passing the Infant Life Protection Act, 1896 , and in the growing concern expressed over female promiscuity which preceded the raising of the age of consent .

The rationale provided for the introduction of these measures was characteristically couched in terms of the intention to purify the colony of moral depravity, with the double standard of morality still evident in the concentration on feminine vice. The regulationist policies were often directed in particular at the "drunken old hags" and prostitutes, while other Legislative reforms superficially seemed to advantage women and to contribute to their "emancipation". Yet such reforms were also essentially regulatory in nature, and were based around the legalisation of women's economic dependence on men. Hence the maintenance of wives and children by men was being legally demanded and enforced at the same time as the sanctions against female promiscuity and children born out of wedlock were increased in harshness and severity (Smart, 1982, p. 132).

Nineteenth century "reforms" did little to challenge the structures which were oppressive of women. As Alan Freeman has indicated in the context of anti-racial discrimination legalisation, legal reforms designed to alleviate the worst excesses of discrimination emerge from a perspective guaranteed to preserve the continued existence of the actual underlying structures of oppression (Freeman, 1982). The legislative "advances" of the late nineteenth century improved the legal position of women regarding their ownership of property, voting rights, criminal accountability, easier access to custody and divorce and so forth (Sutch, 1973) - yet these changes occurred simultaneously with the intensification of pressure on women to subscribe to the growing cult of domesticity and accept their role as unpaid home labourers (Bunkle, 1980). Essentially, then, the reforms alleviated some of the most blatant violations of women's "rights" while preserving the economic dependence and structural subordination of women to men.

It was such economic dependence which contributed in large part to the social and economic vulnerability of women in the nineteenth century, and which underlay much of their recourse to crime. The lives of working-class women in particular bore testimony to such vulnerability, with few career options to offer them an independent lifestyle yet equally few guarantees of financial security from their husbands. Were such women to engage in prostitution, however, they were typically portrayed as helpless victims forced to such extremes through either their own lust (for sex or material possessions), or the lust of seducing men. Thus rather than being depicted as socially and economically vulnerable women making rational choices as to their best prospects for ensuring the economic survival of themselves or their children, prostitutes were characteristically portrayed as the feeble-minded victims of their own pathetic impulses.

Such reasoning is evident today in much of the contemporary research on women which focusses only on their location within the victim role. Current criminological and feminist research is characterised by a greater number of studies on women as the victims of rape, incest, domestic violence and so forth than on women as offenders and as perpetrators of crimes. Yet even our perceptions of women as offenders are based on assumptions of their inherent passivity and lack of self-determination and control. These assumptions are evident, for example, in the recent attempts to establish for women links between menstruation and shoplifting, while for men we have no qualms accepting that they steal because they're poor. Similarly, female terrorists are seen as being motivated by erotomania while their male counterparts are assessed as politically inspired. And while we study women who abuse their children in terms of socially induced suburban neuroticism, we tend to discount abusing fathers as being little more than savage brutes. Maybe we do want to argue that only men can be villains, but if that is the case then we must be equally prepared to argue that only men have the freedom to be so.

What needs to be reiterated is that the structural location of women in society and in their relationships to men place them in positions of economic and social vulnerability, but the recognition of such vulnerability must not be equated with a perception of women as helpless, oppressed victims. The reality of social constraints and structural limitations needs to be affirmed, partly to counter the "poor pitiful pearl" image so prevalent in feminine (and even feminist) consciousness.

Women are not entirely victims of men, Capital, the state or any other elite power. They like any other oppressed group create and arrange alliances, not simply among themselves, but with other interests as well. Even with other actors who have a direct and immediate interest in women's continued subordination.

(Saville-Smith, 1982, p. 188)

Acceptance of the ~~cultural~~ domesticity reflected such complicity in the nineteenth century; perhaps it is evident in the continued acceptance by many women of feminine constitutional and psychological weakness, and in a research focus still primarily concerned with documenting the victim status of women rather than forging a perception of them as social actors and interactors.

Crimes for Women! emerges not just as a trite catch-phrase, but as a statement symptomatic of yet another area evidencing the denial of female autonomy and responsibility. The stereotypes of the victimised and the sexualised woman offender thus need to be rejected in favour of a view of women both sympathetic to their oppression but cognisant also of their capacity for self-determination.

Suggestions for Further Research

Several major challenges emerge from the examination of the treatment of women by the criminal justice system in nineteenth century Canterbury in this thesis.

Firstly, and generally, the need remains for much more extensive documentation of New Zealand herstory, and especially of the oppression of, and struggles involving, working-class women from the colonial period onwards.

Secondly, while considerations of race have been markedly absent from this thesis because of the very small numbers of Maoris in Canterbury and their virtual non-appearance before the criminal law courts, nevertheless a very real contemporary concern involves developing analyses of the threefold oppression of black, working-class women in this country.

Thirdly, the distinction emerging in the thesis between needing to understand the social vulnerability of women while at the same time rejecting their typification as helpless victims provides a challenge to much contemporary feminist research which in its victim-focus ultimately serves to keep women locked in an identification of themselves as "poor pitiful pearls".

Fourthly, and finally, the raising in this conclusion of the ways in which ostensibly benevolent nineteenth century laws may have further contributed to the oppression of New Zealand women demands that on the theoretical level the relationships between law, patriarchy and the state be subjected to rigorous analysis, while politically it urges that the long-term feminist battle be waged not on the reformist front but in the undermining and destruction of those structures ultimately responsible for the continued subjugation and repression of women in this country.

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